INFORMATION MEMO

Providing Assistance in Emergencies:
Coverage and Liability Issues

Learn more about providing and receiving disaster assistance, how the League of Minnesota Cities Insurance Trust (LMCIT or Trust) coverage applies in emergency situations, when city emergency personnel voluntarily provide first aid or other assistance at an emergency scene while they are not on duty, and other potential problems cities need to be aware of. Links to a model off-duty emergency assistance policy.

RELEVANT LINKS:
Read more about emergency assistance in Handbook, Public Safety and Emergency Management.

I. Minnesota’s local emergency assistance law

When disaster strikes in Minnesota, cities and other local governments around the state offer assistance, sending equipment and crews of firefighters, police officers, public works and utilities workers, building inspectors, and whatever other help is needed.

Minnesota’s local emergency assistance statute is best considered a “default” mutual aid agreement for disasters. It clarifies local governments’ authority both to request and to provide emergency assistance without an existing mutual aid agreement, and addresses the liability issues that can arise from emergency assistance.

II. Trust coverage under emergency assistance law

Minnesota’s local emergency assistance statute sets rules for when one political subdivision in Minnesota sends assistance to another Minnesota public body in an emergency. However, the statutory provisions only apply if there’s no written agreement between cities providing assistance to each other. If the sending and receiving cities prefer developing and signing an agreement with terms more suitable to their needs, that can be done.

Following is an explanation for how Trust coverages apply when there’s no written agreement between two cities who both get their coverage through the Trust. If assistance is received from a political subdivision that is not a Trust member, ensure that political subdivision is aware of the various coverage and liability issues and has addressed them appropriately with their own carrier.
A. Employee injuries

Injuries to the sending city’s employees while assigned to provide emergency assistance in another city are covered under the sending city’s LMCIT workers’ compensation coverage. This is because employees responding to another city’s emergency are doing so at the direction of their employer, the sending city.

Employees who self-deploy to an emergency in another city may not be afforded this same protection. This point should be specifically pointed out to those groups of employees who are most often asked to assist (e.g., firefighters, police officers, and emergency medical responders). Deciding to individually respond in another community’s emergency is never a good idea. Doing so can be dangerous to the employee, create liability problems for both cities involved, and lead to disruptive confusion in situations that are already chaotic.

Another reason it is important to follow official dispatch protocols is because of the federal Public Safety Officers Benefit (PSOB) Program. This program provides certain benefits to public safety responders and/or their survivors who have been killed or injured in the line of duty. To qualify for this benefit, the public safety officer must be officially dispatched to a disaster. Federal, state, and local law enforcement officers, firefighters, and other first responders are eligible public safety officers if they are serving a public agency in an official capacity at the time of the injury. Unpaid law enforcement officers, firefighters, chaplains, and members of rescue squads and ambulance crews qualify as well.

B. Liability

The Trust’s liability coverage for the receiving city will respond to liability claims against the sending city’s employees that arise while providing emergency assistance. This is because employees of the sending city are deemed to be employees of the receiving city for tort liability purposes under Minnesota’s emergency assistance statute.

C. Vehicles and equipment

1. Auto liability

For auto liability claims that arise from using the sending city’s licensed vehicles in providing emergency assistance, both cities’ coverages could theoretically apply. Where both cities are Trust members, the Trust will treat the receiving city’s LMCIT auto liability coverage as primary.
If a city borrows or rents vehicles or equipment for an emergency, the city’s LMCIT municipal liability and auto liability coverage will automatically respond to liability claims arising from the operation of those vehicles or equipment. It is not necessary to schedule each individual vehicle to have coverage.

2. Auto or equipment damage

If the city providing assistance sends vehicles and equipment along with employees to operate them, damage to the vehicle or equipment would be covered under the sending city’s property and auto coverages. However, if a city sends its vehicles to be operated by the receiving city’s employees or volunteers, the receiving city’s property and auto coverages would be primary.

When a city employee operates his or her own vehicle on city business, including responding to an emergency in another community, neither the sending nor the receiving city’s LMCIT coverages would apply. Damage to an employee’s car is at their own risk, just as it would be in their own city limits.

If a city borrows or rents vehicles or equipment for an emergency, the city’s LMCIT property and auto coverages will apply up to the applicable sub-limit, if the equipment is in the city’s care, custody, and control.

D. Emergency volunteers

The local emergency assistance law says a city volunteer assisting a city in a disaster or emergency is considered a city employee, if the volunteer is registered with and working under the direction and control of the city.

A registered city volunteer who is injured while assisting in a disaster would therefore be entitled to workers’ compensation benefits and would be covered under the Trust’s workers’ compensation coverage. Disaster volunteers are also automatically covered parties under the city’s LMCIT liability coverage.

These volunteers do not need to be reported to the Trust. However, because the statute specifies that emergency volunteers must be “registered,” the city should maintain a record of the individuals who provide volunteer help to the city in an emergency (or at any other time for that matter). If an injury occurs, the Trust’s workers’ compensation claims staff will need that record to determine whether the individual is covered.
E. Employee compensation

The law provides the city receiving assistance must reimburse the city that is sending assistance for the compensation of the sending city’s employees, for those employees’ travel and maintenance expenses, and for any supplies used.

III. Mutual aid assistance under provisions different from statute

How coverage works if two different cities are working under a mutual aid agreement to provide emergency assistance should be addressed in the mutual aid agreement. If the agreement is silent about workers’ compensation, tort liability, or damage to equipment, the provisions of the statute would apply. If the agreement specifically addresses any of those matters differently from the way the statute handles them, the terms of the agreement would govern.

If both cities are Trust members, liability and auto liability coverage shouldn’t be a problem. Regardless of how the mutual aid agreement addresses tort liability, each city’s respective LMCIT coverage would pick up whatever liability the city has under the agreement. That would include liability for its own employees’ acts and any tort liability the city assumes under the mutual aid agreement for the other city’s employees’ acts.

If a mutual aid agreement makes one city responsible for workers’ compensation benefits for another city’s employees, contact the Trust before you sign the agreement. There may be an additional premium charge for this kind of additional workers’ compensation exposure.

The Trust strongly suggests cities avoid using mutual aid agreements that have language like “each party shall be responsible for its own liability.” Although it may sound like a fair allocation of risk, this language creates the potential for a defense conflict between the two cities if both are sued for a single incident. Under a contract provision like this, when a plaintiff sues both cities for their combined emergency response, the goal for each is to therefore show the other city was more liable and should therefore pay the claim. This kind of conflict can reduce both cities’ chances of successfully defending the plaintiff’s claim. In addition, each city will need its own defense attorney, resulting in greater legal expenses.

The Trust’s Contract Review Service helps guard member cities against common contract liability exposures by identifying defense and indemnification language that may be problematic. Advice and recommendations are provided at no additional charge and help ensure contracted activities fall within the scope of Trust coverages.
IV. Providing help outside Minnesota

Emergency assistance sometimes reaches beyond the borders of Minnesota, whether helping with a flood in Iowa or sending assistance to the coastal states impacted by a hurricane. Sending help to other states is very valuable to disaster response needs, and may also provide some important “real life” training to local responders.

A. Cross-border assistance

It’s common in border communities to have mutual aid agreements that cross state lines. This is perfectly fine, and the provisions of that contract will control the arrangement just as it would if both cities were in Minnesota.

It may sometimes be the case where a city in another state calls a Minnesota city directly to provide assistance, but the two cities don’t have an existing mutual aid arrangement. This scenario can be tricky because state laws may differ in terms of how liability and workers’ compensation issues are handled. In addition, things like immunity defenses, tort cap limits, or workers’ compensation benefits may also be different in another state.

In short, it’s not a good idea to provide emergency assistance outside Minnesota without a written agreement already in place. Trust staff can work with member cities to develop such agreements. If resources are so particularly unique that a city is often called by communities outside Minnesota, contact the Minnesota Duty Officer about how best to manage those resources. Additionally, contact the city’s attorney to develop a standard agreement for sending resources outside Minnesota in an emergency.

B. Interstate assistance under EMAC

There’s another important way Minnesota cities might provide assistance outside the state’s borders. The state of Minnesota, along with all other states, participate in the Emergency Management Assistance Compact (EMAC). EMAC is an inter-state agreement which each state adopts by statute to provide an orderly mechanism through which emergency assistance can be requested and offered. EMAC is coordinated by the National Emergency Management Association.
Although EMAC is a state-to-state arrangement, it’s often the case that much of the actual emergency assistance is provided by local government employees rather than by state employees. EMAC contemplates that interstate assistance by local governments will be requested, coordinated, and dispatched through the state emergency management office. In Minnesota, the state Department of Homeland Security and Emergency Management (HSEM) performs that function.

When EMAC is activated, HSEM is notified of any need for assistance and HSEM in turn notifies local responders. The city providing assistance will sign an intergovernmental agreement with HSEM that specifies the terms and conditions under which assistance will be provided outside Minnesota.

Both the state statute governing interstate assistance by local governments and the current version of HSEM’s intergovernmental agreement provide that the city’s employees are deemed to be state of Minnesota employees for purposes of tort liability. This provides two important protections for city employees responding under EMAC:

- It gives city employees immunity for liability claims arising from their acts or omissions while providing disaster assistance to another state. There’s an exception for “willful misconduct, gross negligence, or recklessness.”
- It provides that city employees providing interstate disaster assistance under EMAC are considered agents of the requesting state for tort liability and immunity purposes. This makes the requesting state responsible to defend and indemnify the sending city’s employees if they’re sued.

In most cases, therefore, liability should not be a concern for a city providing assistance in another state under EMAC. However, if it were to somehow happen there was a liability claim against an LMCIT member city, and it was not handled by the state that was receiving the assistance, the city’s LMCIT liability coverage would respond to that claim, just like any other liability claim against the city.

As is the case with providing assistance within the state of Minnesota under the emergency assistance statute, the sending city remains responsible under workers’ compensation laws for their employees’ injuries. The city’s LMCIT workers’ compensation coverage would continue to apply under an EMAC response.

EMAC also provides for the state receiving assistance to reimburse the party providing assistance for damage to the assisting party’s equipment. If for some reason a Trust member city wasn’t reimbursed by the receiving state, the city’s LMCIT property and/or auto coverages would apply, just as with any other instance of damage to city vehicles or equipment.
The provisions of EMAC and associated HSEM intergovernmental agreements offer responding cities some very important protections. It is therefore imperative that city employees never self-deploy to an emergency outside Minnesota. In the words of HSEM, “If you respond on your own, you are on your own.”

V. Responding to emergencies while off-duty

Emergency personnel includes emergency medical technicians, firefighters, first responders and police.

A. Liability

The Trust’s liability coverage protects emergency personnel for liability claims that arise in the course and scope of their city duties. It is the city council’s decision to define what the duties of the city’s emergency personnel are. The city council may encourage its emergency personnel to provide assistance at the scene of an emergency, and that the city considers it to be within their duty to provide emergency assistance in such situations. If the council does so, the city’s LMCIT liability coverage would respond to claims against emergency personnel arising from the provision of such emergency services.

B. Workers’ compensation

Workers’ compensation applies if an injury occurred within the course and scope of emergency personnel’s duties; and it is the city council’s decision to determine what the duties of emergency personnel are.

Employees who self-deploy to an emergency in another city may not be afforded this same protection. This point should be specifically pointed out to those groups of employees who are most often asked to assist (e.g., firefighters, police officers, and emergency medical responders). Deciding to individually respond in another community’s emergency is never a good idea. Doing so can be dangerous to the employee, create liability problems for both cities involved, and lead to disruptive confusion.

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C. Off-duty emergency assistance policies

There are a few considerations cities should think about when creating policies for employees who respond to emergencies while off-duty: scope of duty to assist, the Good Samaritan Law, and compensation.

1. Scope of duty to assist

Whether providing off-duty emergency assistance should be part of emergency personnel’s duties for purposes of liability and workers’ compensation is a policy decision to be made by the city council. If the city decides to do so, that decision should be reflected in the city’s official records. Preferably, this should be in the form of a resolution or other official action by the city council.

The Trust has suggested language for an off-duty emergency assistance policy, which also contains comments about other things to think about. This draft language is intended only as a starting point. The city needs to evaluate whether this policy makes sense and seems workable in their own situation; whether they wish to be more restrictive on certain points; whether there are other issues that the policy should address; and so on.

2. Good Samaritan Law

There are two aspects of the Minnesota Good Samaritan Law which cities should be aware of in formulating the city’s policy for those employees who respond to emergencies while off-duty.

a. Duty to assist

The Good Samaritan Law creates a duty for every person to assist in an emergency. Subdivision 1 provides as follows:

“A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A person who violates this subdivision is guilty of a petty misdemeanor.”
Emergency personnel, like any other citizen, already have a duty under the statute to provide reasonable assistance if she or he comes across an emergency while off-duty, irrespective of any policy the city may adopt. The real policy issue for the city to consider is not whether the individual should provide reasonable assistance in an emergency; rather, whether the city’s liability and workers’ compensation coverage should apply to the individual when she or he provides that assistance.

b. Immunity from liability

The second part of the Good Samaritan Law makes the individual immune from liability in most situations for acts or omissions while providing assistance at an emergency scene or while in transit to a place where medical care can be provided. There are three exceptions to this immunity:

- If the person acted in a “willful and wanton or reckless manner” in providing the assistance.
- If the emergency occurs in a hospital, doctor’s office, and so on.
- If the person provides assistance during his or her regular employment and receives or expects to receive compensation.

Even though the law says the individual can’t be held liable for emergency assistance in most circumstances, that doesn’t mean she or he can’t be sued. If an injury results, the injured party may simply allege the person’s actions were “willful, wanton, and reckless.” The Good Samaritan Law may make it possible to defend that claim, but there will likely be some legal costs to do so. That’s why it’s still important to the individual to have liability coverage, even in situations where the Good Samaritan immunity applies.

3. Compensation

If the city adopts a policy that says off-duty emergency assistance is within the course of duty for liability and workers’ compensation purposes, the city should consider whether and on what basis emergency personnel would be compensated for providing off-duty emergency assistance.

If regular paid employees are covered by the policy, there are some additional points to keep in mind regarding compensation:

- The Good Samaritan Law’s grant of immunity from liability for a person who voluntarily provides emergency assistance doesn’t apply if she or he renders assistance during regular employment and receives compensation for that service (compensation does not include payments to members of volunteer organizations).
• The Fair Labor Standards Act may be a factor when regular paid employees provide off-duty emergency assistance.
• If any of the employees to whom this policy is applied are members of a collective bargaining unit, the compensation for these services is probably subject to negotiation.

VI. Further assistance

The Trust understands that when a city is dealing with a disaster, the last thing it needs to worry about are the details of coverage. Trust staff is available to answer your questions as quickly as possible.

If your city is working under an agreement rather than under the statute in either providing or receiving disaster assistance, ensure everyone understands their responsibilities under that agreement. It’s a good idea to have the city attorney review all mutual aid agreements. The Trust can also review contracts to help ensure coverage provisions adequately protect the city’s interests.