INFORMATION MEMO
Responding to Emergencies While Off-Duty

Learn how the League of Minnesota Cities Insurance Trust (LMCIT) liability and workers’ compensation coverages would apply if city emergency personnel, such as emergency medical technicians (EMTs), firefighters, first responders or police, voluntarily provide first aid or other assistance at an emergency scene while they are not on duty.

RELEVANT LINKS:
LMC information memo, Providing Assistance in Emergencies: Coverage and Liability Issues.

LMC information memo, LMCIT Liability Coverage Guide.

LMC information memo, LMCIT Workers’ Compensation Guide.

I. Coverage for emergency personnel

Emergency personnel includes emergency medical technicians (EMTs), firefighters, first responders and police. Most often questions about emergency personnel offering assistance at an emergency scene while off-duty involve EMTs. This discussion is presented using the term EMTs, but the issues and considerations are the same for other emergency personnel.

A. Liability

LMCIT’s liability coverage protects the EMT for liability claims that arise in the course and scope of the EMT’s city duties. It is up to the city council to define what the duties of the city’s EMTs are. The city council could determine that as a matter of public policy the city wishes to encourage its EMTs to provide assistance at the scene of an emergency, and that the city considers it to be within the EMT’s duties to provide emergency assistance in such situations. If the council does so, the city’s LMCIT liability coverage would respond to claims against the EMT arising from the provision of such emergency services.

B. Workers’ compensation

Workers’ compensation applies if the injury to the EMT occurred within the course and scope of his or her duties; and it is up to the city council to determine what the duties of the EMT are, just as with any other city position.

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 (e.g., firefighters, police officers, and emergency medical responders) who are most often asked to assist. The message is simple – 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. In order 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.

II. 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.

A. Scope of duty to assist

Whether or not providing off-duty emergency assistance should be part of an EMT’s duty for purposes of liability and workers’ compensation is a policy decision for the city council to determine. 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.

LMCIT has suggested language for a policy, which also contains comments about other things to think about. This draft language is intended only as a starting point for the city. 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.

B. 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.

1. 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.”

An EMT, like any other citizen, already has 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 EMT should provide reasonable assistance in an emergency; rather, the issue is whether the city’s liability and workers’ compensation coverage should apply to the EMT when she or he provides that assistance.

2. 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 in the course of 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 successfully, but there will still almost certainly 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.

C. Compensation

If the city adopts a policy that says off-duty emergency assistance is considered to be within the course of duty for liability and workers’ compensation purposes, the city should consider whether and on what basis the EMT 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 the course of regular employment” and receives compensation for that service (“compensation” does not include “payments to members of volunteer organizations”).
- The Fair Labor Standards Act may come into play in some cases where 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.

III. Further assistance

Please contact your LMCIT underwriter or loss control consultant if you have questions or need further information on these issues.