

Standard Answers

Are Volunteer Workers Eligible for Workers Compensation?

My customer runs a museum that relies on some volunteer workers. Some of the work they do involves physical labor. My customer would like to cover them on his workers compensation policy. Is this possible?

State laws are inconsistent on the matter of volunteers. Whether a volunteer is eligible for workers compensation benefits or not generally hinges on how the specific statute defines an employee.

For example, the Pennsylvania workers compensation act defines employee as "all natural persons who perform services for another for a valuable consideration. ..." So a volunteer (unpaid) worker is not an employee under the act and its provisions don't apply to the volunteer's work. This is different from volunteer firefighters, emergency responders, etc., who are specifically mentioned in the statute as "employees" of their municipalities, and thus entitled to receive benefits.

Therefore, in Pennsylvania, volunteers are not entitled to workers compensation benefits under the law. The museum would not be able to

find an insurer in the state that would cover its volunteers under a workers compensation policy.

Some states give employers a choice of whether or not to include volunteers. Some, like California, permit the extension of workers compensation to volunteers for public agencies and nonprofits. Because compensation premiums are based on payroll, and because a volunteer payroll by definition is zero, adding volunteers does not cost employers anything. In addition, it creates the same exclusive remedy for volunteers that exists for regular employees, so injured volunteers cannot bring suit against employers for work-related injuries.

If the risk of injury is low for the museum volunteers, accident medical insurance may be a better way to protect them. Accident medical insurance is less expensive than workers compensation. However, it comes with maximum amounts of coverage, where workers compensation coverage is unlimited. This coverage obviously provides no liability protection for the museum for the actions of its volunteers.

Most people have health insurance, so it is likely that the volunteers have their own coverage for any injuries that occur. Also, Obamacare (Affordable Care Act or ACA) requires everyone to have health insurance. So it would seem that the ACA will benefit organizations, like the museum your insured runs, that use volunteers. It would seem prudent for the museum to inquire about their health insurance when signing up volunteers.

Employee Acting as a Volunteer

In a recent case out of Oklahoma, the claimant was a computer programmer and he suffered a heart attack while doing lawn work for his employer on the employer's premises. He was not paid anything additional for the lawn work. He sought workers compensation benefits, which his employer denied. The employer denied that the claimant was working as an employee at the time of the injury and claimed that the injury was not incurred during the course and scope of his employment, because the claimant was acting as a volunteer when he was injured.

The Oklahoma Supreme Court awarded benefits. In Oklahoma, the statutory definition of employee provides that employee "shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging, or reimbursement for incidental expenses." Here, the court found that the claimant was not "any other person" performing voluntary service without pay.

The claimant was a salaried employee at the time of his injury and was working at his employer's behest, on the employer's premises. The employer asked for help with the yard work at the office, and the employee volunteered to help. That the claimant "volunteered" to help his employer does not mean that he became a "volunteer" as defined in the workers compensation act. An employee does not cease to be in the course and scope

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of his employment merely because he is not actually engaged in doing some specifically prescribed task. If, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer, he is still an employee.

Therefore, employers should be care-

ful when they ask for employees to volunteer for extra work, especially physical labor work. ■

"Standard Answers" is written by Katharine Panikian, Esq., editor of The John Liner Letter and CSR Advisor, both published by Standard Publishing Corporation.

N.H. Gov. Creates Workers Comp. Commission

CONCORD, N.H. — Governor Maggie Hassan recently issued an executive order creating the Commission to Recommend Reforms to Reduce Workers Compensation Medical Costs. The goal of the commission is to help reduce workers compensation costs for New Hampshire businesses and to ensure injured workers have access to care.

"Employers and workers have done their part to increase workplace safety, but New Hampshire has become one of the most expensive states in the nation for workers compensation, a burden on businesses across the state," Governor Hassan said. "By bringing together business leaders and experts from insurance, health care and labor, the Commission to Recommend Reforms to Reduce Workers Compensation Medical Costs provides an opportunity for stakeholders to identify ways to reduce workers compensation medical

costs and ensure that injured workers have access to quality care. With these reforms, our businesses will be able to reinvest these dollars in growing their companies, creating new jobs and keeping our economy moving in the right direction."

The commission will make recommendations on how to reform the state's workers compensation system after reviewing and analyzing current data and looking at how other state's have successfully reduced workers compensation costs while continuing to offer access to quality care for injured workers.

"New Hampshire is among the most expensive states for workers compensation, an unnecessary disadvantage for businesses that operate here," said New Hampshire Insurance Commissioner Roger Sevigny. "I look forward to working with the commission to

improve our workers compensation system by making recommendations to reduce costs and premiums while ensuring that workers have access to quality care."

Commissioner Sevigny will be the chairman of the Commission to Recommend Reforms to Reduce Workers' Compensation Medical Costs. Sevigny will be joined on the commission by New Hampshire Department of Labor Commissioner Jim Craig or a designee from the department, as well as a group of experts representing workers, employers, insurance professionals and the health-care sector.

The commission's final report is due to Governor Hassan on December 1, 2014. ■

Personal Lines See Rate Moderation

Personal lines insurance rates assessed slightly lower premiums for the month of August, according to the latest report from insurance distribution and underwriting company, MarketScout.

"Personal insurance is becoming more competitive due to the limited number of major catastrophes this year, better automation systems and new market entrants. It's not surprising to see rate moderation," commented Richard Kerr, CEO of MarketScout.

Homeowners policies for homes valued under \$1,000,000 moderated from plus 3% to plus 2%. For homes valued over \$1,000,000, the rate adjustment was larger, from plus 3% to plus 1%.

Automobile and personal articles rates remained unchanged from July at plus 3% and plus 2% respectively.

The National Alliance for Insurance Education and Research conducted pricing surveys used in MarketScout's analysis of market conditions. These surveys help to further corroborate MarketScout's actual findings, mathematically driven by new and renewal placements across the country. ■

Commonwealth of Massachusetts
Division of Insurance

September 12, 2014

GULFSTREAM PROPERTY AND CASUALTY INSURANCE COMPANY

5240 Paylor Lane
Sarasota, FL 34240

The above company has made application to the Division of Insurance to obtain a Foreign Company License to transact Property and Casualty insurance in the Commonwealth.

Any person having any information regarding the company which relates to its suitability for the license or authority the applicant has requested is asked to notify the Division by personal letter to the Commissioner of Insurance, 1000 Washington Street, Suite 810, Boston, MA, 02118-6200, Attn: Financial Surveillance and Company Licensing within 14 days of the date of this notice.

Commonwealth of Massachusetts
Division of Insurance

September 12, 2014

CATLIN IDEMNITY COMPANY

3340 Peachtree Rd. N.E. Ste. 2950
Atlanta, GA 30326

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