

# *University Volunteers*



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## I. INTRODUCTION

Many people volunteer their time and services in support of the CSU mission, providing a valuable benefit to the CSU and its campuses. The CSU policy governing volunteers, including the information to be obtained from them, is set forth in HR Coded Memorandum No. 2005-26. See <http://www.calstate.edu/HRAdm/pdf2005/HR2005-26.pdf>.

Questions sometimes arise regarding how volunteers are treated under the law when they are injured or cause injury to others. For example, does the law regard volunteers as university employees? The legal definition of “employee” is not the same for all purposes. A person considered an employee for purposes of defense and indemnification may not be considered an employee for purposes of workers’ compensation law, and vice versa. As the body of legal authority interpreting the treatment of volunteers (in any capacity) is scant, answers are not always clear.

This handbook addresses some of the questions that may arise concerning CSU’s liability for the actions of university volunteers and presents fundamental concepts. Specific questions or concerns that arise in a particular set of circumstances should be discussed with University Counsel. Campuses should ordinarily consult with University Counsel before making any promises to volunteers.

## II. THE STATE GOVERNMENT VOLUNTEERS ACT

The California State Government Volunteers Act, Cal. Gov’t Code §§ 3110 *et seq.*, sets out some general parameters that define the State’s relationship to those who volunteer on its behalf. The Act defines a volunteer as

“any person who, of his own free will, provides goods or services, without any financial gain, to any state agency.” Cal. Gov’t Code § 3111(a).

The Act requires that volunteers comply with the rules and regulations applicable to the public agency for which they volunteer and places responsibility on the agency to ensure that they do so. Cal. Gov’t Code § 3118.

Underscoring the responsibility of public agencies such as the CSU to ensure the appropriate behavior and conduct of their volunteers, the Act mandates that agencies promulgate rules for volunteers and ensure that they understand their duties:

“Each state department or division utilizing the services of volunteers shall:

(a) Provide sufficient staff for the effective management and development of volunteer programs.

(b) Develop written rules governing job descriptions, recruitments, screening, training, responsibility, utilization, supervision, and insurance of volunteers.

(c) Take such actions as are necessary to insure that volunteers understand their duties and responsibilities.” Cal. Gov’t Code § 3119.

### **III. WHEN VOLUNTEERS ARE INJURED**

When volunteers are injured while performing service for the university, an important question is whether they will be covered by the workers’ compensation laws, which provide medical coverage for the injury and limit the amount of recovery that is otherwise available. The balance struck by the legislature in enacting the workers’ compensation statutory scheme was to benefit the employee by creating a no fault system of recovery, and to benefit the employer by limiting the amount of recovery available to a much greater extent than would be available under the tort system of recovery. Most often, it is in the university’s interest to have its volunteers come under the workers’ compensation laws. Although a fault inquiry is eliminated, the individual’s recovery is less than would be available in traditional litigation.

The definition of who qualifies as an employee under the workers’ compensation law is extremely broad. It includes

“Every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed ...” Cal. Labor Code § 3351.

The definition specifically extends to minors. *Id.*

Individuals who receive “no remuneration for [their] services other than meals, transportation, or reimbursement for incidental expenses” (*i.e.*, volunteers) are generally excluded from the definition and therefore not covered by the workers’ compensation law. Cal. Labor Code § 3352(i). However, the Labor Code allows the governing board of a public agency to adopt a resolution declaring its volunteers to be employees for purposes of workers’ compensation coverage. Cal. Labor Code § 3363.5. The CSU passed such a resolution in November 2000, UFP 11-04-00. See <http://www.calstate.edu/BOT/Resolutions/Nov2000.pdf>.

As a result, CSU volunteers are covered under workers’ compensation laws when they are injured during the course of providing a service to the CSU. If there is a question concerning whether or not injuries occurred during the course of volunteer services, University Counsel should be consulted.

The Trustees' resolution does not cover volunteers of CSU auxiliaries. The boards of CSU auxiliaries may choose to adopt their own resolutions if they wish to provide workers' compensation coverage for their volunteers.

#### **IV. WHEN A VOLUNTEER INJURES ANOTHER**

Another set of questions arises when volunteers cause injury to others. The law generally imposes liability on a public agency for the injuries caused by its employees acting within the scope of their duties. Cal. Gov't Code § 815.2(a). Similarly, public agencies are generally obligated to defend employees against claims brought against them for injuries arising out of their employment. Cal. Gov't Code § 825(a). The question is whether these two principles apply to volunteers.

The California Government Code defines the term employee broadly, to include employees and servants, "whether or not compensated," Cal. Gov't Code § 810.2, which may suggest that volunteers should be treated like employees. By contrast, one court interpreted this statute narrowly, ruling that volunteers are not employees, when their actions injure others. *Munoz v. City of Palmdale*, 75 Cal.App.4th 367, 89 Cal.Rptr.2d 229 (1999). The court took into consideration the harm that would befall public entities if they were responsible for the actions of their volunteers, explaining:

"From a public policy standpoint, the volunteer exclusion serves the common good by protecting against the serious drain on limited funds that would result if vicarious liability were permitted to be imposed for the alleged torts of unpaid volunteers." *Munoz*, 89 Cal.Rptr.2d at 232.

Most public agencies, including CSU, choose to defend and indemnify their volunteers like employees, for injuries arising out of an act or omission occurring within the scope of the volunteer's services performed in good faith. The decision in an individual situation will depend on all of the factual circumstances. If there is a question whether an act or omission arose within the scope of a volunteer's services or whether the services were performed in good faith, University Counsel should be consulted.

#### **V. VOLUNTEERS PARTICIPATING IN SERVICE LEARNING AND ACADEMIC PROGRAMS**

Some persons regarded as volunteers are performing service as a required part of an academic program (*e.g.*, student teachers, interns and community volunteers in a service-learning capacity). They are volunteers in the sense that they do not receive compensation for their services, but their circumstances are very different from someone who steps forward and contributes to the university on a purely voluntary basis. These situations are also different

because the service performed is often rendered to a third party, rather than to the CSU.

The general test as to whether this type of volunteer will be afforded workers' compensation benefits is whether the service provided is of some economic, or tangible, benefit to the university or a third party – *i.e.*, whether the students are working shoulder to shoulder with paid employees, and/or performing the same function or services as other paid workers. *See, e.g., Land v. Workers' Compensation Appeals Board*, 102 Cal.App.4th 491, 495-496 (2002) (citing other cases). If they are performing such a service, they are entitled to workers' compensation benefits for any injury they sustain while performing that service.

It is not clear who must provide the coverage – the CSU, or the third party who receives the benefit of the service. Logically, it should be the latter, as that third party has exclusive control over the risks of the work environment. Nevertheless, it is essential to negotiate this coverage with any third party in advance of the placement of CSU students, to avoid any ambiguity if a claim or lawsuit arises.

It may not be clear in every instance whether a student volunteer meets the test of providing a service with economic benefit. Where there is doubt, it is wise to provide workers' compensation coverage.

Student volunteers who qualify for workers' compensation benefits are limited to that recovery from the party to whom they were providing the service (*i.e.*, their "employer"). To the extent they can establish fault on the part of another party, they may be able to recover from that party. Student volunteers who do not meet the test of providing an economic benefit to the party for whom they are volunteering are not entitled to workers' compensation benefits, but may still be able to recover where there is fault.

Student volunteers may also in some circumstances be provided a defense and indemnification for injuries they cause to others, depending on the circumstances of the specific incident. (See the discussion in Section IV.)

Students enrolled in CSU Nursing, Allied Health, Social Work, or Education credential programs who perform volunteer work for academic credit are covered by the Student Professional Liability Insurance Program. Students performing community service or volunteer work for other CSU academic credit are generally eligible for coverage under the Student Academic Field Experience for Credit Liability Insurance Program. Questions concerning these programs, including whether particular volunteers are eligible, should be directed to Systemwide Risk Management.

## VI. SUMMARY

- A. The CSU is responsible for ensuring that its volunteers comply with appropriate rules and regulations. Before using the services of a volunteer, campuses should consult HR Coded Memorandum No. 2005-26.
- B. CSU volunteers fall under workers' compensation coverage (the same as CSU employees) as a result of the November 2000 resolution by the Board of Trustees.
- C. Student volunteers who provide service as a required part of an academic program are employees for workers' compensation purposes where the service they are providing has an economic, or tangible, benefit to the party to whom it is rendered. Responsibility for workers' compensation coverage for these employees should be negotiated with any third party before CSU students are placed.
- D. The CSU will generally defend and indemnify its volunteers against claims that they caused injury to others, if the injury arose out of an act or omission occurring within the scope of the volunteer's services performed in good faith. Each situation will depend on its own facts.
- E. The defense and indemnification of student volunteers for injuries they cause during the course of an academic assignment is always dependent on the particular circumstances presented. Student volunteers may be entitled to insurance coverage.

These rules are complex and may turn on the facts presented in a particular case. Individual situations should be discussed with University Counsel.