

# GOLDEN STATE RISK MANAGEMENT AUTHORITY

## VOLUNTEER WORKERS' COMPENSATION COVERAGE

The California Labor Code requires that all “employees” be covered under a workers’ compensation insurance policy. Not only does the Labor Code define “employee,” it also provides guidance about who is **not** an employee and, therefore, **not covered** by workers’ compensation insurance.

Specifically, Labor Code § 3352 states that the term “employee” **excludes** any person who performs service for a public agency who receives no compensation for such service, i.e., a “volunteer.”<sup>1</sup>

Accordingly, most volunteers are not considered employees and, therefore, are excluded from coverage under workers’ comp insurance.<sup>2</sup> **Importantly, nonpaid board members are also not considered to be “employees” and, therefore, are not covered by worker’s comp insurance.**

**However**, the Labor Code does allow workers’ compensation insurance coverage for volunteers, including unpaid board members, but **only if your board adopts a resolution** specifically electing such coverage.

There are a number of issues your board should consider when deciding whether to provide workers’ comp coverage for your agency’s volunteers. For example:

- First, does your agency use volunteers? Are your board members paid for their service or not?
- Importantly, your contribution to GSRMA does not generally increase if you choose to provide workers’ compensation coverage to volunteers.
- However, a significant workers’ compensation claim by an injured volunteer could adversely affect your loss ratio, thereby increasing your contribution to GSRMA for coverage.
- On the other hand, an injured volunteer who is **not covered** by workers’ compensation can sue your agency for damages, which will likely also require increased contributions to GSRMA for liability coverage.
- Workers’ compensation is a “no-fault” system deemed by law to be the injured worker’s “exclusive remedy.” That means, first, that fault or cause is not an issue if a worker is injured during the course and scope of his or her employment, coverage is mandatory. Second, the “exclusive remedy” concept means that the injured worker must rely solely on worker’s compensation for medical care and compensation—he or she is generally prohibited from suing the agency.
- Without workers’ compensation coverage, a volunteer may find it difficult or expensive to obtain treatment or compensation for any injury suffered with providing services to the agency.
- Does your agency want to provide coverage to volunteers, including your unpaid board members?

These considerations may be different for each agency. If you have any questions or need clarification, please do not hesitate to contact GSRMA. Remember, if you want coverage for any or all volunteers, Labor Code § 3363.5 requires your agency to adopt the necessary resolution and provide it to GSRMA. A sample resolution is attached.

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<sup>1</sup> Volunteers may receive reimbursement for meals, transportation, lodging or other incidental expenses, which are not considered “compensation for service” under the workers’ compensation scheme.

<sup>2</sup> An exception is volunteer firefighters, who are covered “employees” under workers’ compensation.