

## Memorandum

To: Honorable Betty T. Yee, Chairwoman  
Honorable Jerome E. Horton, Vice Chair  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date: March 3, 2010

From: Kristine Cazadd  
Chief Counsel 

Subject: **Other Chief Counsel Matters – March 23, 2010**  
**Item Number M**

Workers' compensation coverage is mandatory for all state agency employees, but not for volunteers performing services for the agency. Labor Code section 3363.5 provides that a governmental agency may extend workers' compensation coverage to volunteers who perform services for the organization, as designated and authorized by the governing body of the agency or its designee. Thus, under this authority, if an agency has a governing board, the agency must adopt a resolution in order to extend workers' compensation coverage to volunteers.<sup>1</sup>

A Personnel Management Liaisons (PML) memorandum (PML 2010-003) recently issued from the Department of Personnel Administration advised agencies to contact State Compensation Insurance Fund (SCIF), the adjusting agency for State agencies, if they wish to provide coverage to volunteers as defined in Labor Code section 3363.5 (attached). The PML further advised that

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<sup>1</sup> Labor Code section 3350 et seq. defines "employee" for purposes of workers' compensation coverage. Labor Code section 3363.5 provides in full:

(a) Notwithstanding Sections 3351, 3352, and 3357, a person who performs voluntary service without pay for a public agency, as designated and authorized by the governing body of the agency or its designee, shall, upon adoption of a resolution by the governing body of the agency so declaring, be deemed to be an employee of the agency for purposes of this division while performing such service.

(b) For purposes of *this* section, "voluntary service without pay" shall include services performed by any person, who receives no remuneration other than meals, transportation, lodging, or reimbursement for incidental expenses.

an agency with a governing board needs to adopt a resolution to extend workers' compensation coverage to volunteers if it wishes to provide coverage; and to notify SCIF of the resolution.<sup>2</sup>

SCIF has historically accepted the Board of Equalization's request for coverage of volunteer employees; however, a resolution regarding volunteers was not located on file. It is therefore requested that the Board Members adopt the attached resolution in order to ensure compliance with the requirements of Labor Code section 3363.5.

If you have any questions, please contact Sharon Brady Silva, Tax Counsel III, Supervisor, at (916) 319-9615 or Robert Lambert, Assistant Chief Counsel at (916) 799-1383.

Approved:



Ramon J. Hirsig  
Executive Director

KC: SKS: cp

Attachments: Department of Personnel Administration Memorandum  
Workers' Compensation Coverage for Volunteers  
PML 2010-003

Board of Equalization Resolution Authorizing Coverage of Volunteer Employees

- cc: Mr. Ramon J. Hirsig                    MIC: 73
- Mr. Robert Lambert                MIC: 82
- Ms. Sharon Brady Silva            MIC: 82
- Ms. Liz Houser                      MIC: 69
- Ms. Lisa Fien                         MIC: 53
- Ms. Rachel Garza                    MIC: 53

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<sup>2</sup> Per the PML, the notification was due by March 1,2010; however, SCIF has agreed to extend the BOE's deadline to **April** 1,2010, in order for the Board to address this matter.

**Department of Personnel Administration  
Memorandum**

<b>SUBJECT:</b> Workers' Compensation Coverage for Volunteers	<b>REFERENCE NUMBER:</b> PML2010-003
<b>DATE ISSUED:</b> 01/19/10	<b>SUPERSEDES:</b>

This memorandum should be forwarded to:

**Personnel Officers  
Personnel Transaction Supervisors  
Return To Work Coordinators  
Health and Safety Officers**

**FROM:** Department of Personnel Administration  
Benefits Division

**CONTACT:** Tracy Caldwell, Workers' Compensation Analyst  
(916) 445-9760  
Fax: (916) 324-3213  
Email: [tracycaldwell@dpa.ca.gov](mailto:tracycaldwell@dpa.ca.gov)

According to Labor Code 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees.

This PML is specific to the legally uninsured State agencies participating in the Master Agreement. Agencies with an insurance policy for workers' compensation coverage, should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers.

Workers' compensation is a no-fault system, and with few exceptions, the exclusive remedy for injuries and illnesses suffered while working. If your volunteers are covered, they will be entitled to the same benefits as any of your paid staff. Workers' compensation benefits are finite and limited to medical, disability, and retraining costs associated with a specific impairment.

If your volunteers are excluded from workers' compensation coverage, they can seek remedy in the civil court system. The court may award compensation for pain and suffering plus other damages. While the volunteer must prove fault, the civil awards are typically much higher than the corresponding workers' compensation benefits.

Please notify State Fund of your determination to extend workers' compensation coverage to your volunteers by March 1, 2010. Thereafter, review your determination and update your notification to State Fund annually, or whenever there is a significant change to your volunteer program.

If your agency has a governing board, they need to adopt a resolution to extend workers' compensation coverage to volunteers. Documentation concerning the resolution should be included when notifying State Fund.

PML 2010-003  
01/19/10  
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A sample letter is attached that can be used to notify State Fund of your determination regarding your volunteers. The letter must be signed by the agency director or equivalent.

The letter should be mailed to:

State Contract Services – Sacramento  
Frank Floyd, Program Manager  
2450 Venture Oaks Way, Suite 500  
Sacramento, CA 94833

With a copy to:

Department of Personnel Administration  
Benefits, Workers' Compensation Program  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95811

/s/Greg Beatty

Greg Beatty  
Chief, Benefits Division

Attachment

**BOARD OF EQUALIZATION RESOLUTION  
AUTHORIZING COVERAGE OF VOLUNTEER EMPLOYEES**

WHEREAS, the Board of Equalization desires to provide workers' compensation coverage to volunteers who are performing services for the Board of Equalization in recognized activities; and

WHEREAS, Labor Code section **3363.5** allows state agencies to extend workers' compensation coverage to volunteers that perform services for the organization; and

WHEREAS, if an agency has a governing board, the agency needs to adopt a resolution to extend workers' compensation coverage to volunteers;

RESOLVED, that we, the Members of the Board of Equalization, do hereby resolve to provide workers' compensation coverage to volunteers who are performing services for the Board of Equalization, as defined in Labor Code section **3363.5**.

Adopted at Sacramento, California, this \_\_\_\_ of March, 2010 by the State Board of Equalization.