

Health and Safety in Employment (HSE) Amendment Act 2002

Definition of a “volunteer”

After several changes to the HSE Amendment Bill, the HSE Amendment Act (passed in December 2002) states “a volunteer:

- (a) means a person who-
 - (i) does not expect to be rewarded for work to be performed as a volunteer; and
 - (ii) receives no reward for work performed as a volunteer; and
- (b) does not include a person who is in a place of work for the purpose of receiving on-the-job training or gaining work experience.”

When does the Act cover CD volunteers?

The initial HSE Amendment Bill had a provision regarding volunteers who produce “financial gain”. In review the government removed the initial “financial gain” provision (i.e. that volunteers must produce financial gain or monetary reward) and replaced it with a provision that tries to distinguish between volunteers that undertake regular, ongoing work for an employer/organisation, and all other volunteers - providing protection for the “regular” volunteers under the core protections of the Act.

The Act will cover volunteers when:

- a) The volunteer is doing work for an employer or self-employed person who has given *consent* to, or has *knowledge about*, the volunteer work; and
- b) The volunteer does the work on an ongoing and regular basis for that employer or self-employed person; and
- c) The work is an integral part of the business of that employer or self-employed person.

The advice we have received from Occupational Health and Safety (OSH), a service of the Department of Labour, is that the enforceable duties of the Act will cover civil defence (CD) volunteers that fit the above criteria. This is in line with other similar emergency volunteers such as volunteer fire fighters.

In other words, the definitions of “volunteer” in the Act will apply to those volunteers who have established a long-term relationship with the organisation, shown by their regular attendance at activities such as training and/or exercises. By contrast, “spontaneous volunteers” (those who turn up “on the day” in an emergency) will be excluded, as they do not meet all of the above criteria. However, anyone not covered under the Act (e.g. spontaneous volunteers) are covered under a “general duty of care” (in a similar way to how members of the public in a work place are covered). This duty provides that all practicable steps must be taken to ensure the health and safety of people present.

The intent of the Act is to promote sound occupational health and safety values and practices in all kinds of volunteer work. OSH will base these “best practices” on hazard identification and management. However, OSH has noted that this can be problematic when applied to emergency management volunteers such as civil defence and the fire service. This is, in part, recognition of the type of volunteering activity involved. It is of

course extremely difficult for a local authority to turn a dynamic, often dangerous, emergency situation into a healthy and safe environment for volunteers to work in. Anecdotal evidence suggests OSH would be unlikely to prosecute a local authority for an unsafe work environment for volunteers during an emergency, especially if those volunteers have received CD training or learnt "best practice" techniques.

OSH and MCDEM strongly recommend that CD organisations using volunteers employ "best practice" techniques in the management of their volunteers. The fact that emergency volunteers are exposed to a higher risk of injury than other volunteers highlights the importance of training and the development of sound health and safety practices. In keeping with this approach, now that the Amendment Act is passed, but before it becomes law, OSH will be producing guidelines providing health and safety information for all organisations who use volunteers (whether or not they are covered by the law change). The guidelines will provide guidance on ways to keep volunteers involved in work activity safe. These guidelines will be available on OSH's website www.osh.dol.govt.nz

Volunteer Training and Work Experience

A CD organisation providing on-the-job training or work experience to volunteers has legal responsibilities under the Act. Volunteers engaged in these activities are entitled to be treated for safety purposes as if they were employees. This means that they have most of the same rights as employees and that the employer must keep them safe. The only right that they don't enjoy is the right to formally participate in health and safety issues (however there is nothing to stop an employer letting them participate).

Key Points

- a) **Note** that the provisions of the HSE Amendment Act will apply to certain CD volunteers.
- b) **Note** that "spontaneous volunteers" are not specifically covered by the HSE Amendment Act, but are covered by a "general duty of care".
- c) **Note** that CD volunteers receiving on-the-job training and work experience have a similar status in regard to health and safety issues as normal employees.
- d) **Note** that OSH will be producing a number of "best practice" guidelines to assist organisations with the management of their volunteers in early 2003.
- e) **Note** that the amendments will come into force on 5 May 2003.

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