

## LEGAL LIABILITY FOR VOLUNTEERS

Virginia and federal law both contain protection from legal liability for volunteers:

1. Title 44 Immunity

In a declared state of emergency, the following immunity from liability applies:

§ 44-146.23. Immunity from liability.

A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or private agencies, nor, except in cases of willful misconduct, public or private employees, nor representatives of any of them, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. For the purposes of the immunity conferred by this subsection, representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).

B. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, of emergency access or of other uses relating to emergency services shall, together with his successors in interest, if any, not be liable for negligently causing the death of, or injury to any person on or about such real estate or premises or for loss of or damage to the property of any person on or about such real estate or premises during such actual or impending disaster.

C. If any person holds a license, certificate, or other permit issued by any state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service.

D. No person, firm or corporation which gratuitously services or repairs any electronic devices or equipment under the provisions of this section after having been approved for the purposes by the State Coordinator shall be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from any defect or imperfection in any such device or equipment so gratuitously serviced or repaired.

E. Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other legal entity shall be liable in civil damages as a result of acts taken voluntarily and without compensation in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of a hazardous substance, or in preventing, cleaning up, treating, or disposing of or attempting to prevent, clean up, treat, or dispose of any such discharge, provided that such acts are taken under the direction of state or local authorities responding to the incident. This section shall not preclude liability for civil damages as a result of gross negligence, recklessness or willful misconduct. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by the provisions of this paragraph shall be in addition to, not in lieu of, any immunities provided by § [8.01-225](#).

F. No individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities:

1. Pursuant to a Governor-declared emergency or during a formal exercise or training of the State Department of Emergency Management or a responsible county or city emergency management entity; and
2. At the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management;

shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of the formal exercise or training if such formal exercise or training simulates conditions of an actual emergency. This subsection shall not preclude liability for civil damages as a result of gross negligence, recklessness, or willful misconduct. The immunities of this subsection shall not extend to any manufacturer or to any retailer or distributor substantially involved in the manufacture or design of any product or good. The provisions of this subsection shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by this subsection shall be in addition to, and not in lieu of, any immunities provided by § [8.01-225](#).

(1973, c. 260; 1979, c. 193; 1984, c. 743; 2005, c. [474](#); 2008, cc. [121](#), [157](#); 2009, c. [233](#).)

## 2. Altered Standards of Care

In 2008, the General Assembly adopted altered standards of care for declared emergencies as follows:

§ 8.01-225.02. Certain liability protection for health care providers during disasters.

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue.

B. For purposes of this section:

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § [44-146.16](#); and

"Health care provider" has the same definition as provided in § [8.01-581.1](#). (2008, cc. [121](#), [157](#).)

## 3. Immunity from Liability for Abandonment in a Declared Emergency.

§ 8.01-225.01. Certain immunity for health care providers during disasters under specific circumstances.

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster by delivering health care to persons injured in such disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster.

B. In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared; and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the Joint Commission on Accreditation of Healthcare Organizations' standards for granting emergency practice privileges.

C. For the purposes of this section:

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § [44-146.16](#); and

"Health care provider" means those professions defined as such in § [8.01-581.1](#).

D. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any immunities provided in other state or federal law, including, but not limited to, §§ [8.01-225](#) and [44-146.23](#).

(2003, c. [507](#); 2008, cc. [121](#), [157](#).)

## 4. The PREP Act

The PREP Act, the Public Readiness and Emergency Preparedness Act, found at 42 U.S.C. 247d-6d, has two functions: (1) broad liability protection for covered persons; and (2) compensation to individuals injured by receipt of covered countermeasures.

The PREP Act states in part:

Subject to the other provisions of this section, a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration under subsection (b) has been issued with respect to such a countermeasure.

42 U.S.C. § 247d-6d(a)(1) (emphasis added). Each of the underlined terms is discussed in turn:

- i. Covered Person: A covered person is the United States or a person or entity that is a manufacturer of such a countermeasure, a distributor of such a countermeasure, a program planner, a qualified person who prescribed, administered, or dispensed such countermeasure, or an official, agent, or employee of a person or entity described above. 42 U.S.C. § 247d-6d(i)(2).

A “qualified person” is a licensed health professional or other individual who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed or a person so identified in a declaration by the Secretary. 42 U.S.C. § 247d-6d(i)(8).

A covered person need not be a volunteer to receive protection under the PREP Act.

- ii. Loss means death, physical, mental, or emotional injury, illness, disability, or condition, fear of physical, mental, or emotional injury, illness, disability, or condition, including any need for medical monitoring, or loss or damage to property, including business interruption loss. 42 U.S.C. § 247d-6d(a)(2)(A).
- iii. Caused by. . . means that the loss must be linked to the administration or use of the vaccine, including a causal relationship with the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, or use of the countermeasure. 42 U.S.C. 247d-6d(a)(2)(B). Claims such as breach of contract, a slip and fall on the premises not causally related to the countermeasure, discrimination, or defamation, for example, would not be covered.
- iv. Covered Countermeasure means a qualified pandemic or epidemic product, a security countermeasure, or a drug, biological product, or device that is authorized for emergency use in accordance with section 564 of the Federal Food, Drug, and Cosmetic Act. 42 U.S.C. § 247d-6d(i)(1).

A “qualified pandemic or epidemic product” is a drug, biological product or device that is manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic; or limit the harm such pandemic or epidemic might cause, or a product manufactured, used, designed, developed, manufactured, licensed, or procured, or used to diagnose, mitigate, prevent, treat, or cure a condition caused by one of these products AND is approved or cleared by the FDA, or the object of research for possible use and is the subject of an exemption of the FDA or authorized for emergency use under the FDA. 42 U.S.C. § 247d-6d(i)(7).

- v. Declaration: Immunity exists only to the extent declared by the Secretary of HHS. Such declaration lists category of diseases, health conditions or threats for which the Secretary recommends the administration or use of the countermeasure, the effective time period, the population for which countermeasure recommended, the geographic area for the countermeasure, and the means of distribution. 42 U.S.C. § 247d-6d(b).

The application of the PREP Act's immunity is not without conditions. First, the countermeasure must fall within the Secretary's declaration. 42 U.S.C. § 247d-6d(b). The countermeasure must have been administered or used during the effective period of the Secretary's declaration. The countermeasure must have been administered or used for the category of disease, health condition, or threat to health specified in the declaration. Also, the qualified person who administered the countermeasure must be in a population specified by the declaration and must be physically present in a geographic area specified by the declaration or had a connection to such area specified by the declaration at the time of administration. There exists a rebuttable presumption that any administration or use during the effective period of the emergency declaration by the Secretary of a covered countermeasure shall have been for the threat for which the declaration was issued. 42 U.S.C. § 247d-6d(a)(6).

Second, the PREP Act excludes willful misconduct from immunity. 42 U.S.C. § 247d-6d(d). Willful misconduct is an action taken intentionally to achieve a wrongful purpose, knowingly without legal or factual justification; or in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit. 42 U.S.C. § 247d-6d(c)(1). The plaintiff has the burden of proving willful misconduct. 42 U.S.C. § 247d-6d(c)(3).

Third, claims filed in a foreign jurisdiction are excluded. However, a claim filed in the U.S. for an action taken outside the U.S. is not excluded.

If a person is injured as a result of a countermeasure, the damages would be covered by a compensation fund, the procedures for which are covered in great detail in the federal regulations. 42 U.S.C. § 247d-6d(e). Compensation is available for medical benefits, lost wages, and death benefits. Compensation is reduced by "collateral source benefits," which include insurance payments, workers' compensation, contract benefits that reimburse the cost of medical costs or income disability benefits, or payments from any other publicly or privately funded program. 42 U.S.C. § 247d-6d(e)(7).

## 5. Liability Protection for Vaccine-related Injury

### § 8.01-44.2. Action against physician for vaccine-related injury or death.

In any case where a person could file or could have filed a petition for compensation pursuant to Subtitle 2 of Title XXI of the Public Health Services Act of the United States (42 U.S.C. § 300aa-10 et seq.) for the vaccine-related injury or death associated with the administration of a vaccine in the Commonwealth by or under the supervision of a physician licensed to practice medicine in Virginia, no civil action shall lie against such physician, or any person administering such vaccine on behalf of such physician for injury or death resulting from an adverse reaction to such vaccine, except where such injury or death was caused by gross negligence of the physician, his agents or employees, in the administration of such vaccine.

(1987, c. 664.)

6. The National Vaccine Injury Compensation Program disposes of many claims of adverse effects from vaccines. 42 U.S.C. § 300aa-1 *et seq.* This program does not confer immunity, but does prevent a tort claim in most cases.

7. Federal Volunteer Protection Act, 42 U.S.C. 14504: This federal law provides liability protection for volunteers who work without compensation for governmental or non-profit organizations. The Act requires that the volunteer is acting within the scope of the volunteer's responsibilities, is properly licensed or certified, that the harm is not caused by willful, criminal, reckless, or flagrant conduct or gross negligence, and is not caused by the operation of a vehicle. Significantly, however, the Act does NOT cover "non-economic loss." This includes pain and suffering, which can be a significant part of a personal injury verdict.

8. State Government Volunteers Act

The State Government Volunteers Act provides liability protection to volunteers as follows:

D. Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in state and local service, including, but not limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.

Va. Code § 2.2-3605(D) (1977, c. 347, § 2.1-558; 1979, c. 131; 2001, c. [844](#); 2005, c. [474](#).)

The Act states also that:

D. For the purposes of this chapter, individuals involved in emergency services and preparedness activities pursuant to the definition of "emergency services" in § [44-146.16](#) shall be considered volunteers in state and local services and shall be accordingly entitled to the benefits conferred in this chapter. As volunteers in state and local services, such individuals shall be deemed to be regular-service volunteers.

Va. Code § 2.2-3602(D) (1977, c. 347, § 2.1-556; 2001, c. [844](#); 2005, c. [474](#).)

The Act contains the following definitions:

§ 2.2-3601. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Department" includes all departments established in the executive branch of state government and local agencies under the jurisdiction or supervision thereof, and for the purposes of §§ [2.2-3602](#), [2.2-3604](#) and [2.2-3605](#), shall include political subdivisions of the Commonwealth.

"Material donor" means any person who, without financial gain, provides funds, materials, employment, or opportunities for clients of agencies, instrumentalities, or political subdivisions of the Commonwealth;

"Occasional-service volunteer" means any person who provides a one-time or occasional voluntary service;

"Regular-service volunteer" means any person engaged in specific voluntary service activities on an ongoing or continuous basis;

"Volunteer" means any person who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the Commonwealth;

"Volunteer in state and local services" shall include, but shall not be limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT) while engaged in emergency services and preparedness activities as defined in § [44-146.16](#).

(1977, c. 347, § 2.1-555; 1979, c. 131; 2001, c. [844](#); 2005, c. [474](#).)

## 9. Sovereign Immunity

The sovereign immunity mentioned in the State Government Volunteers Act is a common law doctrine (established by the courts). Under the doctrine of sovereign immunity, the Commonwealth of Virginia is immune from liability for harm caused by it or its agents' or employees' simple negligence.

First, a volunteer would have to qualify as an agent of the Commonwealth. Then, the Court uses a four-factor test to determine sovereign immunity: (1) the nature or function performed by the employee; (2) the extent of the state's interest and involvement in that function; (3) whether the act performed involved the use of judgment and discretion; and (4) the degree of control and direction exercised by the state over the employee. *James v. Jane*, 221 Va. 43 (1980). A court would weigh each prong on a case-by-case basis. Therefore, it is not possible in advance in the planning stages to predict whether sovereign immunity would apply.

## 10. "Good Samaritan Act"

The Code of Virginia states.

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person (i) at the scene of an accident, fire, or any life-threatening emergency; (ii) at a location for screening or stabilization of an emergency medical condition arising from an accident, fire, or any life-threatening emergency; or (iii) en route to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

Va. Code § 8.01-225 (A)(1). This immunity is more suited to a "side of the road" type situation than a public health response. The Act goes on to contain a number of other specific immunities, such as exemptions from liability for CPR and the use of a defibrillator and other immunities that are not likely to apply in an organized response to a public health emergency.

## 11. Charitable Immunity

Virginia has a common-law doctrine of charitable immunity. Charitable immunity precludes a charity's beneficiaries from recovering damages against the charity for the negligent acts of its agents if due care was exercised in the hiring and retention of the agents. Moore v. Warren, 250 Va. 421, 422-43 (1995). A charity must be a non-profit, but mere 501(c)(3) status is not sufficient. A court looks to the charitable purpose and an absence of gain or profit. Davidson v. Colonial Williamsburg Found., 817 F. Supp. 611, 613 (E.D. Va. 1993).

If an organization qualifies as "charitable," then the "beneficiaries" of the charity are barred from recovering against the charity and its agents. However, the immunity extends only to "beneficiaries" and not invitees or strangers. Thrasher v. Winand, 239 Va. 338, 340-41 (1990). It would remain to be seen whether a member of the general public who received care in a public health emergency would be considered a "beneficiary" and whether the caregiver was part of a "charity."

Virginia's General Assembly essentially abolished charitable immunity for hospitals in 1974. Va. Code § 8.01-38.

## 12. Immunity for Emergency Medical Services and Fire Department Volunteers

A locality is entitled to sovereign immunity for claims resulting from the provision of emergency medical services. Edwards v. City of Portsmouth, 237 Va. 167, 375 S.E.2d 747 (1989). The locality is entitled to immunity, because by providing the services, the locality is engaging in a governmental function. Id.

By statute, persons who provide emergency services are also immune from liability if they are either volunteers or employees of a locality. Virginia Code § 8.01-225 (cited previously as the Good Samaritan Act) provides protection for emergency services personnel as follows:

5. Is an emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

Va. Code § 8.01-225(A)(5). The Act also provides coverage for EMS medical directors, physicians providing assistance, dispatchers, and other communications providers. Va. Code § 8.01-225. As stated previously, the Good Samaritan Act applies generally to one who provides emergency care without compensation at the scene of an emergency. The Act states that "compensation" does not include "the salaries of police, fire or other public officials or personnel who render such emergency assistance." Va. Code § 8.01-225(F). See also Va. Code § 27-2.1. ("The fire fighters or emergency medical technicians of any county, city or town . . . shall have all of the immunities from liability and exemptions from laws, ordinances and regulations").

These statutes do not address specifically the situation of a locality contracting with a private company to provide emergency medical services. The Virginia Code states with respect to such fire and rescue services that:



§ 27-23.6. Provision of fire-fighting or emergency medical services.

A. Any county, city or town may contract with or provide for any volunteer fire-fighting or emergency medical services companies or associations in the county, city or town for the fighting of fire or provision of emergency medical services in any county, city or town. If such provisions are made by the county, city or town, the fire-fighting or emergency medical services company shall be deemed to be an instrumentality of the county, city or town and as such exempt from suit for damages done incident to fighting fires or providing emergency medical services therein. The county, city or town may elect to provide for the matters authorized in §§ [27-4](#) and [27-39](#).

B. Any county, city or town may provide fire-fighting and emergency medical services to its citizens by using both government-employed and volunteer company or association firefighters and emergency medical services personnel. If such a system is utilized, the volunteer fire-fighting and emergency medical services companies and associations shall be deemed an instrumentality of the county, city or town, and as such exempt from suit for damages done incident to providing fire-fighting and emergency medical services to the county, city or town. The county, city or town may also elect to provide for matters authorized in §§ [27-4](#) and [27-39](#).

"Providing fire-fighting or emergency medical services" includes travel while performing fire, rescue or other emergency operations in fire-fighting apparatus or other emergency vehicles as described in §§ [46.2-1023](#) and [46.2-920](#), respectively.

(1970, c. 187; 1982, c. 239; 1991, c. 54; 2001, c. [142](#); 2002, c. [286](#).)

Va. Code § 27-23.6.

13. Isolation and Quarantine

Liability protection exists for those involved in the isolation or quarantine of an individual with a disease of public health threat as follows:

§ 32.1-48.016. Immunity from liability.

Any person, including a person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), who, in good faith and in the performance of his duties, acts in compliance with this article and the Board of Health's regulations shall not be liable for any civil damages for any act or omission resulting from such actions unless such act or omission was the result of gross negligence or willful misconduct.

(2004, cc. [773](#), [1021](#); 2005, c. [474](#).)

Va. Code § 32.1-48.016.

14. Smallpox

Specific liability protections exist for a public health emergency involving smallpox. Section 304 of the Homeland Security Act covers manufacturers and distributors of

countermeasures, hospitals, clinics, and other health care entities under whose auspices the countermeasures are administered, and licensed health care professionals and others qualified to administer countermeasures under state law. The Act provides immunity from liability for those individuals and entities and substitutes the U.S. as a defendant in cases. Section 304's liability protections are triggered by a declaration from the Secretary of HHS. Such declaration would specify the timeframe, covered countermeasures, and categories of individuals it covers. Liability protection does not extend to grossly negligent, reckless, willful, or illegal misconduct.

#### 15. Workers' Compensation

Somewhat tangential to a discussion of volunteer liability is workers' compensation coverage. Public health emergency workers may have workers' compensation coverage in some circumstances.

Virginia's Workers' Compensation Act defines the categories of workers covered by the Act in its definition of "employee." Typically, an employee is one in the course and scope of employment with his/her employer, but the Act contains a couple of other provisions that could apply in an emergency. Such definition states in part:

I. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

Va. Code § 65.2-101(1). Therefore, a volunteer such as an MRC member could receive workers' compensation from a locality or university after the adoption of a resolution. However, this applies only to those located in same locality as the university or local government. This provision would not be helpful for out-of-state workers.

Another part of the definition of "employee" applies to those responding at the request of VDEM.

m. (1) Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

Id. This paragraph covers the above individuals who respond on behalf of VDEM. The Virginia Department of Health would need to ensure proper coordination with VDEM to ensure that out-of-state workers are on a proper mission assignment to come under the VDEM umbrella.

Coverage could apply through EMAC if the Governor has declared a state of emergency and Virginia has gone through the steps to activate the Emergency Management Assistance Compact ("EMAC"). EMAC states with respect to workers' compensation that:

ARTICLE VIII. COMPENSATION.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Va. Code § 44-146.28:1. This language covers state employees who assist in another state. However, EMAC does not really contemplate the use of private providers and does not address their coverage. Therefore, coverage for those individuals would be only as described under the Workers' Compensation Act's definition of "employee" above.

Other options for coverage exist. Sometimes a private workers' compensation carrier will agree to cover such volunteer service. Or, if workers are federal employees or could be designated as temporary federal employees or intermittent disaster response personnel by the federal government, they could be covered by the federal workers' compensation program.