



NCCI DISCUSSION PAPER ON VOLUNTEER FIREFIGHTERS

DATE: January 2012

OBJECTIVE

Discuss the various ways that volunteer firefighters currently are being underwritten and premium is being determined and the impact of these variations.

BACKGROUND

Code 7704

There is a record of class codes for firefighting as far back as the early 1900s. In 1920, earlier codes were discontinued and replaced by Code 7704—Firefighters. Code 7704 was used as a national code applicable in all NCCI states. The code mainly applied to paid firefighters employed by municipalities or other entities responsible for providing fire-related protective services to the public. A filed code footnote specifically mentioned part-time and volunteer firefighters, and several states had state special cross-references dealing with them. Fire patrols or protective corps and drivers—not salvage operations were also covered under this code, as were forest firefighters for operations not conducted from an aircraft.

In December 1925, the phraseology for Code 7704 was amended to include drivers because NCCI's Manual Committee¹ agreed drivers in this industry were exposed to the operating hazards of the class. Applying rates per \$100 payroll historically has been the method used to compute premium for the firefighting code. Determining the minimum premium that applies to the code has not been as straightforward.

¹ NCCI's Manual Committee was responsible for the oversight of the Basic Manual Rules.

NCCI records indicate that prior to 1926, minimum premiums used for Code 7704 were computed by applying the applicable rate to a minimum payroll amount based on the population of the community serviced by the fire department. Experience indicated that this method of computing minimum premiums was not satisfactory, particularly in towns with volunteer fire departments. The records state, "Computing premiums upon the basis of population does not recognize the difference in firefighting exposure depending upon the general character of the fire department."

Subsequently, NCCI determined that a payroll basis of computing minimum premiums should be continued. But rather than use population as a determinant, it went to using the method of a formula that takes the rate times a minimum premium multiplier (state average annual wage/\$100) plus the expense constant. It was also decided to add a provision whereby a nominal premium could be collected for volunteer or part-time firefighters. A minimum payroll of \$100 for each part-time or volunteer firefighter was implemented in 1926 because that was considered to be a conservative basis for premium computation.

Increase to \$300 Minimum Payroll

In 1942, NCCI implemented an increase from \$100 to \$300 in the minimum payroll for volunteer firefighters based on external feedback. This feedback advised that the increase was needed to collect adequate premium for the exposure. The minimum payroll amount of \$300 was arrived at by taking a \$2.00 rate for Code 7704, assuming a small fire company would have approximately eight volunteer firemen, and adjusting the amount of minimum payroll per firefighter that would achieve the 1942 minimum premium for Code 7704 of \$50. ($\$300 \times 8 \times \$2/100 = \48). It was pointed out that if the minimum payroll was left at \$100, a company of 25 volunteer firemen could be included in the minimum premium of \$50. By increasing the minimum payroll to \$300, any company with more than eight volunteers would be charged a premium commensurate with the hazards.

Using the same approach and theory today as used in 1942 to arrive at an equivalent to the \$300 minimum payroll yields a current minimum payroll of \$1,250 assuming eight volunteers, a \$1,000 minimum premium (the assigned risk rate minimum premium for this class code is generally \$1,000) and a \$10.00 average rate.

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In 1962, the phraseology of Code 7704 was clarified to state that the \$300 minimum payroll basis applied per volunteer firefighter. This revision was made because the language of the phraseology was ambiguous and could have been misinterpreted to mean that the minimum payroll basis applied to a group of volunteer firefighters.

In 1968, it was again recommended that the \$300 minimum payroll basis for volunteer firefighters be reviewed due to concerns that it was no longer adequate. A review of the issue noted that there was considerable variation among state workers' compensation acts with respect to the treatment of volunteer workers. There were also legal aspects of coverage that needed to be considered. Therefore, a subcommittee was appointed to study this issue. However, no further action was taken.

In 1975, NCCI revisited the volunteer minimum payroll issue carried forward from 1968. The previous study in 1968 had been unable to achieve a consensus with respect to an alternative program. As the status remained unchanged, it was decided that no action was needed at that time. This was the last time that the matter was reviewed on a national level.

Code 7711 – Firefighters and Drivers - Volunteer

In 2004, as part of NCCI's Classification Research Project, the Firefighting industry was researched. At the time, volunteer firefighters were separately classified to state-special class codes in six states:

- Class Code 7711
 - Connecticut (eff. 1967)
 - Nevada (eff. 1975)
 - Virginia (eff. 1999)
- Class Code 7719
 - Colorado (eff. 1961)
- Class Code 8411
 - Arizona (eff. 1969)
 - Oregon (eff. 1981)

As a result of the research on this industry, NCCI proposed to establish two national codes, one for nonvolunteer firefighters (Code 7710) and one for volunteer firefighters (Code 7711).

In July 2007, as a result of Item B-1397-Revisions to Basic Manual Classifications and Rules, Code 7711-Firefighters & Drivers-Volunteer was adopted as a national code in most NCCI states with the following language:

Applies when coverage is provided to volunteer firefighters in states where such workers are entitled to benefits under the workers compensation law. Applies to volunteer firefighters serving with or without payroll. Unless state statutes, regulations and/or rules specify otherwise, premium for volunteer firefighters must be determined on the basis of the payroll normally received by non-volunteer firefighters doing the same or similar work; however, in no case should the remuneration of any such firefighters, including volunteer officers, be less than \$300 annually per person. The minimum payroll of \$300 annually per person also applies to fire department volunteers that are assigned to a standard exception classification. Applies to organizations serving the public through firefighting and related fire protection services.

Includes volunteer firefighters who also perform emergency medical services. Separately rate employees who perform only EMS duties and no firefighting to Code 7705.

Separately rate non-volunteer firefighters and drivers to Code 7710.

Prior to July 1, 2007, both paid and volunteer firefighters were classified to Code 7704—Firefighters and Drivers, which was discontinued in Item B-1397. Prior to its discontinuation, the national classification wording for Code 7704 stated the following:

When part-time or volunteer firefighters are employed, the actual payroll of all such persons shall be included with the payroll of regular firefighters in computing the premium. In no case, however, shall the payroll of any such firefighters be taken at less than \$300 per person per annum.

Code 7710

Item B-1397 also introduced Code 7710, which was adopted in most NCCI states in July 2007. Code 7710 – Firefighters & Drivers is assigned to regular paid firefighters. Code 7710 and Code 7711 replaced previous national Code 7704. Procedures for classifying fire department dispatchers have been outlined in the scope of the trucking code, 7228.

Statistical Code 9219

Based on recommendations in Item B-1397, Statistical Code 9219—Volunteer Firefighters—Head Count was established in Item U-1397—NCCI’s Statistical Plan for Workers Compensation and Employers Liability Insurance, effective September 1, 2008 in most states. With the creation of Classification Codes 7710 and 7711, and Statistical Code 9219, NCCI has had the ability to collect separate payroll and loss data for both paid and volunteer firefighters. However, few carriers report this data under Statistical Code 9219. NCCI has determined that the reporting of volunteer firefighter headcount data is no longer required; therefore, NCCI is proposing to discontinue Statistical Code 9219.

Instructions for Volunteer Worker Coverage

In 1970, NCCI published payroll determination instructions for volunteer worker coverage. The guidelines originally said to use actual remuneration received by the volunteer as a basis of premium, but if no remuneration were received, then premium should be based on wages paid to similar workers. An imbalance came about from this wording in situations where the volunteer received a nominal amount of compensation, which was used to determine premium, while an unpaid volunteer was charged a different premium based on wages of similar paid employees. The instructions were therefore amended in 1973 to say, “Except as otherwise provided, premium shall be determined on the basis of the remuneration normally received by regular employees doing the same or similar work.”

This is similar to the current rule in NCCI’s ***Basic Manual for Workers Compensation and Employers Liability Insurance***, Rule 2-J, which provides this instruction on determining the premium basis for volunteer workers:

Premium must be determined on the basis of the payroll normally received by and the classification assigned to non-volunteer employees doing the same or similar work.

Note that this rule applies to volunteer workers in general with no specific mention of volunteer firefighters.

Firefighter Statistics

The National Fire Protection Association (NFPA) estimates that there were approximately 1,148,100 firefighters in the U.S. in 2009. Of the total number of firefighters 335,950 (29%) were career firefighters and 812,150 (71%) were volunteer firefighters. Most of the career firefighters are in communities that protect 25,000 or more people. 73% of the volunteer firefighters are in departments that protect fewer than 2,500 people.

The NFPA estimates there are 30,165 fire departments in the U.S. Of these:

- 2,457 departments are all career
- 1,752 mostly career
- 5,099 are mostly volunteer and
- 20,857 are all volunteer.

In the U.S., 13,275 or 44% of departments provide EMS service, 4,475 departments or 15% provide EMS service and advanced life support, while 12,415 departments or 41% provide no EMS support.

In June 2011, the NFPA released a study entitled *Firefighter Fatalities in the United States – 2010*. The NFPA study notes that a total of 72 on-duty firefighter deaths occurred in the United States in 2010. “On-duty” is defined as “being at the scene of an alarm, whether a fire or non-fire incident; while responding to or returning from an alarm; while participating in other fire department duties such as training, maintenance, public education, inspection, investigation, court testimony or fund raising; and being on call or stand-by for assignment at a location other than at the firefighter’s home or place of business.”²

The NFPA study shows that 44 out of the 72 firefighter deaths were volunteer firefighters. In addition, the volunteer firefighters had a higher percentage of deaths related to exertion/stress (59% compared to 52% for career firefighters) and sudden cardiac death (55% compared to 44%). Furthermore, 25% of the volunteer firefighter deaths occurred in firefighters with over 30 years of service, while 28% of the career firefighter deaths occurred in firefighters with less than 5 years of service.

² NFPA Fire Analysis and Research, *Firefighter Fatalities in the United States – 2010*, June 2011
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Fire Department Rating

The Insurance Services Office (ISO) runs a program which collects information on municipal fire protection efforts in communities around the country, analyzes and rates those efforts, and provides that information to insurance companies to help establish appropriate fire insurance premiums for residential and commercial properties. ISO has information on over 44,000 jurisdictions.

Additional details about this program are available on ISO's website:

www.isomitigation.com

Fire Department Funding

States utilize various mechanisms to provide financial support for local fire departments. Those mechanisms include insurance premium surcharges, low-interest loans, grants and subsidized training.

However, volunteer fire departments often struggle with funding. For example, West Virginia passed legislation in 2011 creating a workers' compensation insurance subsidy program for volunteer fire departments. The \$5 million fund is to help volunteer fire departments cover expected increases in their workers' compensation insurance premiums. Even with such assistance, one local volunteer fire department was on the verge of shutting down until a concerned citizen loaned the department \$33,000 to cover the premium and save the department until the money could be reimbursed by the West Virginia special fund. That department's county is expected to vote on a special fire levy assessment in 2012.

Recently, some cities and counties around the country have considered implementing "crash taxes" to charge automobile insurers for the costs of providing emergency services for automobile accidents. Similarly, other cities and counties bill health insurance companies for ambulance trips. At this time, NCCI is not aware of any volunteer fire departments charging insurance companies for costs related to fire response, although several state statutes allow either fire departments or municipalities to recover costs for such services. NCCI will monitor this issue.

ISSUES AND ANALYSIS

The following are issues that continue to arise as they relate to volunteer firefighters:

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Volunteer Firefighting Time Not Defined and Inconsistently Tracked

Volunteer firefighters often participate in activities other than firefighting or responding to emergencies. These activities include fund raising efforts such as boot drives or dinners. Other volunteer firefighters are on-call at home or are social members who spend time at the volunteer fire station. This can cause confusion regarding an appropriate payroll basis for “call or truck” time versus “social/ non-call” time.

In addition, volunteer firefighter hours often are not tracked or are not tracked consistently. For example, in **Alabama**, NCCI recently received several phone calls regarding the need for volunteer hours to be produced, whether at audit or renewal of an assigned risk policy. However, the information was not available because either the hours were not tracked or only training hours were tracked.

Furthermore, the Independent Insurance Agents & Brokers of America and several agents recently contacted the **Alabama** Department of Insurance regarding a carrier’s audits of volunteer fire departments apparently due to the carrier’s efforts to have volunteer firefighters track their hours to support an \$18 per hour premium charge for each volunteer. The amount of \$18 per hour was obtained from the website for the United States Department of Labor, Bureau of Labor Statistics as the average hourly wage for firefighters in Alabama.

Appropriate Classification

Volunteer firefighters may also perform emergency medical services (EMS). As noted in the firefighter statistics section above, 44% of fire departments provide EMS service, 15% provide EMS service and advanced life support, and 41% provide no EMS support.

This can cause confusion regarding the appropriate classification since Code 7705—Ambulance Service Companies and EMS (Emergency Medical Service Providers) & Drivers is assigned to employees who perform only EMS duties and no firefighting. A separate analysis will be performed on Code 7705 since this code applies to volunteer ambulance or EMS personnel serving with or without payroll.

Payroll Basis

The \$300 per person minimum annual amount has been utilized since 1942; therefore, the minimum annual amounts for volunteer firefighters are outdated and inadequate with respect to the payroll basis for premium determination. In the states below, the current minimum payroll per volunteer is as follows:

- Alaska - \$2,000 per volunteer, per year
- Kansas - \$100 per volunteer, per year
- South Carolina - \$1,000 per volunteer, per year
- Vermont - \$275 per volunteer, per year

The issue of payroll basis has come up recently in several states.

The issue of inadequate payroll recently arose in **Kansas**, which currently has \$100 minimum payroll. To address these concerns, NCCI met with the Kansas Insurance Department and provided information about the various ways that volunteer firefighters are being underwritten and premium is being determined and the impact of these variations.

On March 16, 2011, the **South Dakota** Department of Revenue & Regulation issued Bulletin 11-2, *Volunteer Firefighters – Workers’ Compensation Rating Rules* – which states that the Director has determined that the current rating rule creates an unfairly discriminatory rate with respect to volunteer firefighters because the rule provides that the number of hours a volunteer firefighter worked is multiplied not by actual payroll but an amount based upon paid firefighters. Prior to July 1, 2007, the rating rule provided that the rate was computed by using actual payroll of volunteer firefighters but that the payroll shall not be less than \$300. Effective September 1, 2011, the rating rules in effect for volunteer firefighters prior to July 1, 2007, was proposed in a national filing (Item B-1424). The **South Dakota** Department has approved the national item filing.

The **Virginia** Bureau of Insurance reviewed Item B-1397 because of comments received involving the minimum payroll used to calculate the premium for volunteer firefighters. The Bureau also inquired about proposed legislation in other states regarding this matter. NCCI provided information about recent legislation to address the Bureau’s inquiry.

In 2011, the **West Virginia** legislature passed House Bill 3271, which created the Volunteer Fire Department Workers' Compensation Premium Subsidy Program within the state Auditor's Office to help defray workers' compensation premium costs for volunteer fire departments in West Virginia. The bill also designated a funding formula for distribution of funds allocated to the Subsidy Program and granted authority to the Auditor's Office to administer the program.

In conjunction with the passage of House Bill 3271, the West Virginia Offices of the Insurance Commissioner (OIC) directed NCCI to revise the payroll basis of premium, the associated loss cost, assigned risk rate, and rating values for Classification Code 7711. NCCI proposed, and the OIC approved, the following:

- A state exception for Code 7711 was created in West Virginia to revise the payroll to be used for premium calculation for volunteer firefighters. The payroll for each individual volunteer firefighter will be determined on the basis of total hours worked, including social time, and any hours worked on behalf of the volunteer fire department for the betterment of the community. Such total hours worked must be multiplied by the most current "hourly mean wage" for paid firefighters in West Virginia, as published by the US Department of Labor, Bureau of Labor Statistics, in effect at the time of policy application or renewal.
- In no event should the minimum payroll used for premium calculation for each individual volunteer firefighter, including volunteer officers, be less than \$1,000 per year. (To ensure correct premium is obtained, a copy of each volunteer fire department roster is required upon application and renewal of coverage. It is also required to apply for the subsidy.)
- The assigned risk minimum premium for Classification Code 7711 will remain at \$1,000.
- A state exception to NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*** Rule 2-J – Volunteer Workers was created in West Virginia for the determination of premium for volunteer firefighters.
- NCCI filed a revised loss cost, assigned risk rate, and rating values for Code 7711 in West Virginia, to be effective from July 1, 2011 through October 31, 2012.
 - Voluntary loss cost is \$7.44
 - Assigned risk rate is \$13.44

In **Missouri**, Missouri Employers Mutual (MEM) increased the annual volunteer firefighter payroll basis to \$2,080 effective January 1, 2003, for new and renewal policies. (This figure was calculated by multiplying the \$40 minimum weekly indemnity benefit for volunteer firefighters by 52 weeks. The \$40 minimum weekly benefit is set by statute under § 287.170.5.) The increase occurred after MEM reviewed its experience in Code 7704 and determined that the experience was less than favorable. While the rate for Code 7704 was not adjusted, as MEM wanted to offer coverage to volunteer fire departments, it decided to increase the volunteer firefighter payroll basis so that adequate premium could be collected.

Impact on Assigned Risk Plan

There was inconsistency among assigned carriers on how to determine payroll for volunteer firefighters based on Item B-1397. Some utilized the state average weekly wage (SAWW) (SAWW/40 hours x # hours worked) and others used \$300 per volunteer firefighter. The inconsistent capturing of actual payroll at audit with the potential for substantial increase in premium also resulted in regulators receiving complaints and audited premiums not being paid, which impacted assigned risk plan eligibility. Additionally, when assigned carriers were charging the minimum, there was a potential for assigned risk policy premiums to be lower than voluntary policy premiums for these risks. All carriers in the assigned risk plan are now using the state minimum for each firefighter.

Multiple Exposure Bases Inconsistent with Ratemaking Principles

For ratemaking purposes in most states, data from Code 7710 – Firefighters & Drivers, Code 7711 – Firefighters & Drivers – Volunteers and historical data from discontinued Code 7704 – Firefighters is combined to determine a single loss cost/rate applicable for both Codes 7710 and 7711. Payroll reported for Code 7710 is actual payroll while payroll reported for Code 7711 is determined and reported inconsistently as described above. This generally leads to much lower payroll being reported for Volunteer Firefighters than Paid Firefighters, although claims and losses are reported for both. Because there is a mix of multiple exposure bases being used for ratemaking, the current loss cost/rate is not consistent for risks being written in this class and results in a loss cost/rate that in general may be too high for Paid Firefighters and too low for Volunteer Firefighters.

Other Issues

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The Southern Association of Workers' Compensation Administrators (SAWCA) surveyed its members to determine how their states provide workers' compensation coverage for volunteer firefighters. SAWCA surveyed its members in response to inquiries about states where volunteer firefighters are not required to have coverage, but are granted the right to purchase workers compensation medical or disability insurance, and jurisdictions where volunteer firefighters are rolled into the state's self-insurance program.

2011 FILING – ITEM B-1424

Item B-1424—Revisions to Basic Manual Classification Code 7711— Firefighters & Drivers—Volunteer and Discontinuation of Statistical Code 9219—Volunteer Firefighters—Head Count

There have been recent inquiries regarding the national classification wording for Code 7711, which states “premium for volunteer firefighters must be determined on the basis of the payroll normally received by nonvolunteer firefighters doing the same or similar work” and how this payroll is actually derived. As a result, in Item B-1424, NCCI proposed to revise the wording for Code 7711 pertaining to volunteer firefighter payroll determination to return it to what was previously used in Code 7704, which has since been discontinued.

Item B-1424 revises the classification wording of Code 7711 to explain that volunteer firefighter payroll should be based on the actual payroll, if any, of each individual volunteer firefighter, subject to a minimum payroll of \$300 per year for each individual volunteer firefighter. In Alaska, Kansas, South Carolina, Vermont and Virginia, the classification wording regarding payroll determination will be proposed and their state minimum payroll (which is not \$300) will not be revised at this time.

In addition to revising the classification wording of Code 7711, NCCI proposed to discontinue Statistical (Stat) Code 9219.

Item B-1424 is not being filed in Arizona, Florida, Montana, Nevada, Oregon, and West Virginia. These states currently have state-special codes or state exceptions for volunteer firefighters that are not impacted by the national change to the classification wording of volunteer firefighters.

- In Arizona and Oregon, Code 8411 is assigned to volunteer firefighters instead of national Code 7711
- In Florida and Montana, Code 7704 is assigned to volunteer firefighters instead of national Code 7711
- Nevada and West Virginia have state exceptions to Code 7711

NCCI proposed separate filings for Arizona, Nevada, and West Virginia to discontinue Stat Code 9219. These three states have approved the filings. In Florida, Montana, and Oregon, Stat Code 9219 is not applicable; therefore, no filings are needed.

Item B-1424 is proposed to be effective September 1, 2011. As of December 8, 2011, the following states had approved this item: Alabama, Alaska, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah and Vermont.

RELEVANT STATUTES

Many state workers' compensation laws explicitly provide coverage for volunteer firefighters, while some state laws allow coverage if the fire chief or governing authority elects such coverage. Other state workers' compensation laws specifically exclude coverage for volunteer firefighters, while some do not reference them at all, and several state laws are ambiguous.

Furthermore, there are variations among the states in calculating medical and/or indemnity benefits for volunteer firefighters. For example, Iowa law provides that volunteer firefighters shall be paid an amount equal to the compensation they would be paid if they were injured in the normal course of regular employment or 140% of the statewide Average Weekly Wage, whichever is greater. Montana provides that the employer shall report payroll for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the Average Weekly Wage divided by 40 hours, subject to a maximum of 1 ½ times the statewide Average Weekly Wage; however, a self-employed sole proprietor or partner who is covered as a volunteer firefighter is also eligible for benefits at

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an assumed minimum wage for 2,080 hours per year. Nevada law provides for a wage of \$2,000 per month.

The following statutes are examples of the various ways that volunteer firefighters are referenced in the state laws. The statutory provisions are from the state workers compensation law unless otherwise indicated.

Alabama

Sec. 25-5-50, Articles not applicable to certain employers; exemption for corporate officers and independent contractors; coverage for school boards and volunteer fire departments and rescue squads; licensed real estate agent and product demonstrator not employee.

(d) This section shall provide for voluntary coverage of certified volunteer fire departments as described in Section 9-3-17 and legally organized rescue squads that meet the minimum personnel and equipment standards as established by the Alabama Association of Rescue Squads, that are engaged in fighting a fire or performing other duties involving any emergency incident and while performing any official supervised duties of the organization, including maintaining equipment and attending official training classes, and while traveling to and from an emergency incident.

(e) In all cases where an injury that is compensable under the terms of the Alabama Workers' Compensation Law is received by a volunteer fire fighter or rescue squad member, the wages for purposes of computing the average weekly wage shall be equal to 66 2/3 percent of what he or she is earning at his or her regular place of employment or 66 2/3 percent of the minimum wage, whichever is greater.

(f) State certified volunteer fire departments and legally organized rescue squads are herein granted the right to purchase workers' compensation medical or disability insurance, or both, but in no event are they required to do so.

In no event shall the regular employer of a volunteer fire fighter or rescue squad member be liable for a compensable injury under this section.

Alaska

Sec. 23.30.092. Volunteer ambulance attendants', police officers', firefighters', and search and rescue personnel's insurance.

A political subdivision may elect to provide benefits and compensation to its volunteer ambulance attendants, police officers, firefighters, or search and rescue personnel by obtaining insurance that would provide its volunteer ambulance attendants, police officers, firefighters, or search and rescue personnel with benefits and compensation at least equivalent to those conferred upon volunteer ambulance attendants, police officers, firefighters, or search and rescue personnel by this chapter, and the election shall be considered compliance with the coverage and insurance provisions of this chapter. The election shall be made by filing copies of the insurance policy or policies with the commissioner.

Arizona

23-901.06. Volunteer workers

In addition to persons defined as employees under section 23-901, volunteer workers of a county, city, town, or other political subdivision of the state may be deemed to be employees and entitled to the benefits provided by this chapter upon the passage of a resolution or ordinance by the political subdivision defining the nature and type of volunteer work and workers to be entitled to such benefits. The basis for computing compensation benefits and premium payments shall be four hundred dollars per month.

Arkansas

From Title 21, Public Officers and Employees; Chapter 5, Compensation and Benefits, Subchapter 6, Public Employee Workers' Compensation Act:

Section 21-5-603, Definitions.

(a) The term "public employee", as used in this subchapter, includes:

(5) Emergency services volunteer workers duly qualified and registered as

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provided in § 12-75-129 when such emergency services volunteer workers are acting subject to the order, control, or pursuant to a request of, and under the supervision and instruction of the Governor, the Arkansas Department of Emergency Management, or the chief executive officer of a county or local government unit making use of emergency service volunteer workers.

(b) The term "public employer", as used in this subchapter, means:

(2) (A) Any municipality of the State of Arkansas or any department, board, commission, or institution owned, operated, managed, and administered by a municipality of the State of Arkansas.

(C) Any unincorporated city or town shall not be deemed to be a public employer and shall not have workers' compensation liability coverage for its employees under the provisions of this subchapter;

(3) (A) Any county of the State of Arkansas or any department, board, commission, or institution owned, operated, managed, and administered by a county of the State of Arkansas.

(5) The Arkansas Department of Emergency Management and any local government unit making use of emergency service volunteer workers.

21-5-609. Benefits for emergency service volunteer workers.

(a) Benefits payable for the injury or death of a person appointed and regularly enrolled in an emergency services organization and covered by this subchapter shall be limited to the provisions of the Workers' Compensation Law, § 11-9-101 et seq. Such benefits are payable if the injury or death occurred while the person was:

(1) Actually engaged in emergency service duties, either during training or during a period of emergency; and

(2) Under the supervision and instruction and subject to the order or control of, or serving pursuant to a request of, the Governor, the Arkansas Department of Emergency Management, or the chief executive officer of a county or local government unit making use of emergency **volunteer** workers.

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(b) The remedy provided in this section shall be the exclusive remedy as against the state and political subdivisions of the state.

(c) (1) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, all duly registered and qualified emergency services **volunteer** workers shall be deemed local government or state employees and shall receive compensation and their survivors shall receive death benefits in the same manner as regular local government or state employees for injury or death arising out of and in the course of their activities as emergency services **volunteer** workers.

(2) (A) If an emergency services **volunteer** worker is injured or killed while subject to the order or control of a local government, compensation and benefits shall be charged against the applicable local government's experience rate and paid from the appropriate state workers' compensation fund.

(B) If the emergency services **volunteer** worker was under the order or control of a state agency when injured or killed, compensation and benefits shall be charged against the experience rate of the state agency which exercised order or control at the time of injury or death and paid from the appropriate state workers' compensation fund.

(d) (1) For the purpose of subsection (c) of this section, the weekly compensation benefits for an emergency services **volunteer** worker who receives no monetary compensation for services rendered as such a worker shall be calculated based upon the wages received from his or her regular or usual employment, the same as a regular local or state employee, with respect to injury, disability, or death.

(2) The reimbursement of twenty-five dollars (\$25.00) or less for out-of-pocket expenses for gasoline, oil, uniforms, required equipment, or similar expenses incurred in response to an emergency situation shall not be construed to be monetary compensation for the emergency services **volunteer** worker.

From Title 22, Public Health and Welfare, Chapter 22, Fire Prevention, Protection & Safety, Subchapter 8, Fire Protection Services:

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20-22-809. Workers' compensation.

(a) For the purpose of **workers' compensation** coverage in cases of injury to or death of an individual, **volunteer** firefighters of certified fire departments, other than municipal fire departments, who meet the requirements of this section are county employees and shall receive minimum **compensation**. Their survivors shall receive death benefits in the same manner as regular county employees for injury or death arising out of and in the course of their activities as firefighters.

(b) **Volunteer** firefighters requesting **workers' compensation** coverage shall annually file with the county clerk evidence that:

(1) The firefighter has met the minimum training standards recommended by the Arkansas Fire Protection Services Board; and

(2) The **volunteer** firefighter is a member of a certified fire department other than a municipal fire department.

(c) A member of a fire department under § 20-22-806 who does not engage in firefighting is eligible for **workers' compensation** under this section.

Colorado

8-41-209. Coverage for occupational diseases contracted by firefighters - repeal.

(1) Death, disability, or impairment of health of a firefighter of any political subdivision who has completed five or more years of employment as a firefighter, caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system and resulting from his or her employment as a firefighter, shall be considered an occupational disease.

Connecticut

Sec. 7-314a. Death, disability and injury benefits. Presumption.

(a) Except as provided in subsections (e) and (f) of this section, active members of volunteer fire departments and active members of organizations certified as a

volunteer ambulance service in accordance with section 19a-180 shall be construed to be employees of the municipality for the benefit of which volunteer fire services or such ambulance services are rendered while in training or engaged in volunteer fire duty or such ambulance service and shall be subject to the jurisdiction of the Workers' Compensation Commission and shall be compensated in accordance with the provisions of chapter 568 for death, disability or injury incurred while in training for or engaged in volunteer fire duty or such ambulance service.

(b) For the purpose of this section, the average weekly wage of a volunteer fireman or volunteer ambulance service member shall be construed to be the average production wage in the state as determined by the Labor Commissioner under the provisions of section 31-309.

(c) For the purpose of this section, there shall be no prorating of compensation benefits because of other employment by a volunteer fireman or volunteer ambulance service provider.

(d) For the purpose of adjudication of claims for the payment of benefits under the provisions of chapter 568, any condition of impairment of health occurring to an active member of a volunteer fire department or organization certified as a volunteer ambulance service in accordance with section 19a-180 while such member is in training for or engaged in volunteer fire duty or such ambulance service, caused by hypertension or heart disease resulting in death or temporary or permanent total or partial disability, shall be presumed to have been suffered in the line of duty and within the scope of his employment, provided such member had previously successfully passed a physical examination by a licensed physician appointed by such department or ambulance service which examination failed to reveal any evidence of such condition.

(e) Any member of a volunteer fire company or department or organization certified as a volunteer ambulance service in accordance with section 19a-180 performing fire duties or such ambulance service pursuant to a mutual aid understanding between municipalities shall be entitled to all benefits pursuant to this section and shall be construed to be an employee of the municipality in which his fire company or department or such ambulance service is located.

(f) Any member of a volunteer fire company or department and any person summoned by the State Forest Fire Warden or by any state forest fire personnel or district or deputy fire warden under the supervision of the State Forest Fire Warden pursuant to section 23-37, who performs fire duties under the direction of

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such personnel or warden pursuant to section 23-37, shall be construed to be an employee of the state for the purpose of receiving compensation in accordance with the provisions of chapter 568 for death, disability or injury incurred while performing such fire duties under such direction.

Florida

440.091

Law enforcement officer, firefighter, emergency medical technician, or paramedic; when acting within the course of employment.—

(2) If a firefighter as defined by s.112.191(1)(b) is engaged in extinguishing a fire, or protecting and saving life or property due to a fire in this state in an emergency, and such activities would be considered to be within the course of his or her employment as a firefighter and covered by the employer's workers' compensation coverage except for the fact that the firefighter was off duty or that the location of the fire was outside the employer's jurisdiction or area of responsibility, such activities are considered to be within the course of employment. This subsection does not apply if the firefighter is performing activities for which he or she is paid by another employer or contractor.

112.191 Firefighters; death benefits.

(1)(b) The term "firefighter" means any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified pursuant to s. 633.35, and who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter.

Georgia

34-9-1, Definitions.

(2) "Employee" - There shall also be included within such term any volunteer firefighter of any county or municipality or this state, but only for services rendered in such capacity which are not prohibited by Code Section 38-3-36 and

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only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer firefighters;

34-9-260(5) states in part: such firefighter's...average weekly wage shall be deemed to be the Georgia average weekly earnings of production workers in manufacturing industries for the immediately preceding calendar year, as published by the Georgia Department of Labor.

Hawaii

§386-181 Generally. (a) As used in this section:

"Volunteer firefighter" means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

(b) If a member of a public board, a reserve police officer, a police chaplain, sheriffs' chaplain, a volunteer firefighter, a volunteer boating enforcement officer, or a volunteer conservation and resources enforcement officer is injured while performing services for the board, county police department, county fire department, department of public safety, harbors division of the department of transportation, or division of conservation and resources enforcement of the department of land and natural resources, under the conditions specified in section 386-3, the person or the person's dependents shall be entitled to all compensation in the manner provided by this chapter and, for the purposes of this chapter, the person shall, in every case, be deemed to have earned wages for the services.

Idaho

72-102. Definitions.

(32) "Volunteer emergency responder" means a firefighter or peace officer, or publicly employed certified personnel as that term is defined in section 56-1012, Idaho Code, who is a bona fide member of a legally organized law enforcement agency, a legally organized fire department or a licensed emergency medical service provider organization who contributes services.

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72-205.Public employment generally –

(4) Every person who is a volunteer emergency responder shall be deemed, for the purposes of this law, to be in the employment of the political subdivision or municipality where the department, agency or organization is organized.

72-419.Determination of average weekly wage

(7) In the case of a volunteer emergency responder, the income benefits in the first fifty-two (52) weeks shall be based on the average weekly wage in his regular employment or sixty-seven percent (67%) of the current average weekly state wage, as determined pursuant to section 72-409(2), Idaho Code, whichever is greater.

Illinois

Two separate sources of compensation:

LINE OF DUTY COMPENSATION ACT (820 ILCS 315/2) (from Ch. 48, par. 282)

Sec. 2. As used in this Act, unless the context otherwise requires:

(f) "Volunteer fireman" means a person having principal employment other than as a fireman, but who is carried on the rolls of a regularly constituted fire department either for the purpose of the prevention or control of fire or the underwater recovery of drowning victims, the members of which are under the jurisdiction of the corporate authorities of a city, village, incorporated town, or fire protection district, and includes a volunteer member of a fire department organized under the "General Not for Profit Corporation Act", approved July 17, 1943, as now or hereafter amended, which is under contract with any city, village, incorporated town, fire protection district, or persons residing therein, for fire fighting services. "Volunteer fireman" does not mean an individual who volunteers assistance without being regularly enrolled as a fireman.

WORKERS' COMPENSATION ACT 820 ILCS 305/10) (from Ch. 48, par. 138.10)

Sec. 10. The basis for computing the compensation provided for in Sections 7 and 8 of the Act shall be as follows:

The compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52; but if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or of the casual nature or terms of the employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer. In the case of volunteer firemen, police and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment. When the employee is working concurrently with two or more employers and the respondent employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

Indiana

IC 36-8-12-10

Volunteers; medical treatment and burial expense coverage; determinations; premium expenses

Sec. 10. (a) A:

(1) volunteer firefighter, a member of the emergency medical services personnel, or an emergency medical technician working in a volunteer capacity for a volunteer fire department or ambulance company is covered; and

(2) volunteer working for a hazardous materials response team may be covered;

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by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

Iowa

85.61 Definitions.

10. "Volunteer fire fighter" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

85.36 Basis of computation.

a. In computing the compensation to be allowed a volunteer fire fighter, emergency medical care provider, reserve peace officer, or volunteer ambulance driver, the earnings as a fire fighter, emergency medical care provider, reserve peace officer, or volunteer ambulance driver shall be disregarded and the volunteer fire fighter, emergency medical care provider, reserve peace officer, or volunteer ambulance driver, shall be paid an amount equal to the compensation the volunteer fire fighter, emergency medical care provider, reserve peace officer, or volunteer ambulance driver would be paid if injured in the normal course of the volunteer fire fighter's, emergency medical care provider's, reserve peace officer's, or volunteer ambulance driver's regular employment or an amount equal to one hundred and forty percent of the statewide average weekly wage, whichever is greater.

Kansas

44-508. Definitions

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes;

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persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (b) 14 of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities;

Kentucky

KRS 342.640, Coverage of Employees

(3) states in part: Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of an emergency management agency, as established under KRS Chapters 39A to 39E, shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state;

[In Kentucky the vast majority of volunteer fire departments under this provision are covered by the county in which they serve. A few are covered by the "city". Additionally, the statute that addresses determination of average weekly wage specifically states the wage of the volunteer firefighter shall be determined based upon the individual's regular employment.]

342.140 Computation of employee's average weekly wage.

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

(3) In the case of volunteer firemen, police, and emergency management agency members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

Louisiana

1036. Volunteer firefighters

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A. It is hereby declared by the Legislature of Louisiana that the fire prevention and suppression services provided by volunteer fire companies are vital to the protection of the safety of the citizens of the state. This Section is intended to present the state fire marshal with a means by which he shall provide workers' compensation coverage to volunteer members of fire companies. The remedies provided herein shall constitute the exclusive remedy of the volunteer member against the fire company as provided in R.S. 23:1032.

C.(1) The state fire marshal shall obtain workers' compensation insurance for volunteer members, as defined herein, who participate in the normal functions of the fire company. Nothing shall prohibit the state fire marshal from obtaining an insurance policy to provide coverage for a single fire company or multiple fire companies.

[This was effective August 15, 2009 and the state fire marshal chose to obtain one policy to cover all volunteer firefighters.]

Maine

39-A §102. DEFINITIONS

11. Employee. The term "employee" is defined as follows.

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire association as defined in Title 30-A, section 3151; volunteer emergency medical services persons as defined in Title 32, section 83, subsection 12; and police officers are employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services person, the average weekly wage must be taken to be the earning capacity of the injured employee in the occupation in which the employee is regularly engaged. Employers who hire workers within this State to work outside the State may agree with these workers that the remedies under this Act are exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, are presumed to include such an agreement. Any reference to an employee who has been injured must, when the employee is dead, include the employee's legal representatives, dependents and other persons to whom compensation may be payable;

Maryland

§ 9-503. Occupational disease - Presumption - Firefighters, fire fighting instructors, rescue squad members, advanced life support unit members, and police officers [Amendment subject to abrogation].

(a) Heart disease, hypertension, and lung disease - Firefighters, fire fighting instructors, rescue squad members, and advanced life support unit members.- A paid firefighter, paid fire fighting instructor, or sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to have an occupational disease that was suffered in the line of duty and is compensable under this title if:

Montana

39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.

(1) As used in this chapter, the term "employee" or "worker" means:

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage

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divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

7-33-4109. Supplementary volunteer fire department authorized for cities of second class -- voted levy for volunteer firefighters' disability income insurance. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department is exempted from compliance with 7-33-4128 to the extent that section applies to the volunteer fire department by way of penalties and infringements.

(3) A volunteer is an enrolled member of the volunteer fire department, assists the paid fire department, and is eligible to serve only on the board of trustees of the fire department relief association of the city. However, not more than three volunteer members may be on the board of trustees. A person who is a volunteer for the purposes of this section is not entitled to receive a service pension.

(4) The governing body of the city may:

(a) pay an enrolled volunteer firefighter a minimum of \$1 for attending a fire and a minimum of \$1 for each hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper place;

(b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying disability income insurance coverage for the volunteer firefighters of the volunteer fire department as provided in 7-6-621.

(5) In attending fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department.

Nebraska

48-115. Employee and worker, defined; inclusions; exclusions; waiver; election of coverage.

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

48-126.01. Volunteer fire department; emergency management agency, organization, or team; military forces; law enforcement reserve force; volunteer emergency medical service; members; wages; basis of computation.

In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation, any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, or any member of a volunteer emergency medical service, which military forces, law enforcement reserve force, fire department, emergency management agency, organization, or team, or volunteer emergency medical service is organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section [29-2277](#), pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section [29-2277](#), pursuant to any condition of probation, or community service as defined in section [29-2277](#), for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, department, agency, organization, team, or service, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section [48-121](#).

If such member or person is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum compensation rate for total disability.

If the wages received for the performance of duties as a member of such military forces, reserve force, department, agency, organization, team, or service exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of

such military forces, reserve force, department, agency, organization, team, or service.

Nevada

NRS 616A.145 “Employee”: Volunteer firefighters. Volunteer firefighters belonging to a regular organized and recognized fire department, while engaged in their duties in any voluntary community service which they may undertake, and while acting under the direction of the fire chief or any of the assistants of the fire chief in the protection of life or property, during fire, flood, earthquake, windstorm, ambulance service or other rescue work, shall be deemed, for the purpose of chapters 616A to 616D, inclusive, of NRS, employees of the city, town, county or district so recognizing them, at the wage of \$2,000 per month, and are entitled to the benefits of those chapters upon such city, town, county or district’s complying therewith.

New Hampshire

281-A:2 Definitions. – Any word or phrase defined in this section shall have the same meaning throughout RSA 281-A, unless the context clearly requires otherwise:

I. "Call or volunteer firefighter" means a firefighter who is not regularly employed by a fire department of any city, town or precinct in the state but who answers for duty only to fire alarms and who has been appointed by the fire department with which the firefighter serves.

VII. (a) "Employee", with respect to public employment, means:

(1) Any person in the service of an employer, as defined in RSA 281-A:2, IX, including members of the general court, under any express or implied voluntary contract of hire and every elected or appointed official or officer of the state or any political subdivision or agency thereof while performing official duties.

(2) Any person who is a call firefighter or special police officer, volunteer or auxiliary member of a fire or police department, ambulance or rescue service, or the state police, whether paid or not paid. For the purposes of this chapter, such a person shall be deemed to be an employee of the political subdivision of the state in which the department is organized.

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281-A:15 Computing Average Weekly Wages; After-Tax Earnings. –

II. Except as provided in paragraph III, the average weekly wage for any of the following injured while on duty shall be deemed to be the average weekly wage that entitles such employee to 100 percent of the state's average weekly wage as a maximum benefit:

(a) Any call firefighter or special police officer, volunteer or auxiliary member of a fire or police department or ambulance or rescue service of the state or any of its political subdivisions, whether paid or not paid.

(b) Any paid or not paid employee as defined by RSA 281-A:2, VII(a)(4) or (5).

(c) Any member of the general court injured in the performance of the duties as such a member.

(d) Any person who is not employed and who is acting as an agent to the department of health and human services or the department of safety as described in RSA 281-A:2, VII(a)(6).

II-a. Any person who is employed and who is on leave from such employment and who is acting as an agent to the department of health and human services or the department of safety as described in RSA 281-A:2, VII(a)(6) shall have his or her average weekly wage computed under paragraph I of this section.

III. Where the employee is employed as of the date of injury concurrently by 2 or more employers subject to this chapter and is disabled from any such employment, "average weekly wages" shall be computed on the basis of the weekly wages received by the employee from all such employers at the time of the injury. Notwithstanding paragraph II, if the computation of average weekly wage under this paragraph is more favorable to the injured employee, he shall be entitled to such amount. The employer in whose employment the employee was injured shall be liable in the first instance for payment of all benefits. Any additional compensation resulting from the increase in average weekly wages due to the employee's concurrent employment shall be reimbursed by the special fund created under RSA 281-A:55. The employer in whose employment the employee was injured shall be liable for all payments under RSA 281-A:23 and 25.

New Mexico

50-9-3. Definitions.

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As used in the Occupational Health and Safety Act:

- A. "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency or any other legal entity or their legal representatives, agents or assigns;
- B. "employee" means an individual who is employed by an employer, but does not include a domestic employee or a volunteer nonsalaried firefighter;

North Carolina

§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires –

- (2) "Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.
- (3) Employer. – The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the State, for the purposes of this law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof. For purposes of this Chapter, when an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources is engaged in emergency fire suppression activities for the

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Division of Forest Resources, that individual's employer is the Division of Forest Resources.

(5) Average Weekly Wages. – In case of disabling injury or death to a volunteer fireman; member of an organized rescue squad; an authorized pickup firefighter, as defined in subdivision (2) of this section, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources; a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol functioning under Article 11 of Chapter 143B of the General Statutes, under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman, member of an organized rescue squad, authorized pickup firefighter of the Division of Forest Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, member of an auxiliary police department, or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury. Provided, however, that the minimum compensation payable to a volunteer fireman, member of an organized rescue squad, an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, a sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly benefit established in G.S. 97-29.

Oklahoma

§85-132a. Workers' compensation insurance – Volunteer firefighters.

A. 1. Volunteer fire departments organized pursuant to state law may obtain workers' compensation insurance for volunteer firefighters through the Volunteer Firefighter Group Insurance Pool pursuant to requirements established by CompSource Oklahoma which shall administer the Pool. For the premium set by CompSource Oklahoma, the state shall provide Fifty-five Dollars (\$55.00) per firefighter per year. Except as otherwise provided by subsection D of this section, the total amount paid by the state shall not exceed Three Hundred

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Twenty Thousand Three Hundred Thirty-eight Dollars (\$320,338.00) per year or so much thereof as may be necessary to fund the Volunteer Firefighter Group Insurance Pool.

2. CompSource Oklahoma shall collect the premium from state agencies, public trusts and other instrumentalities of the state. Any funds received by CompSource Oklahoma from any state agency, public trust, or other instrumentality for purposes of workers' compensation insurance pursuant to this section shall be deposited to the credit of the Volunteer Firefighter Group Insurance Pool. CompSource Oklahoma shall collect premiums, pay claims, and provide for excess insurance as needed.

B. CompSource Oklahoma shall report, annually, to the Governor, the Speaker of the Oklahoma House of Representatives, and the President Pro Tempore of the State Senate the number of enrollees in the Volunteer Firefighter Group Insurance Pool, and the amount of any anticipated surplus or deficiency of the Pool; and shall also provide to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate sixty (60) days advance notice of any proposed change in rates for the Volunteer Firefighter Group Insurance Pool.

C. The amount of claims paid, claim expenses, underwriting losses, loss ratio, or any other financial aspect of the Volunteer Firefighter Group Insurance Pool shall not be considered when determining or considering bids for the amount of any premiums, rates, or expenses owed by, or any discounts, rebates, dividends, or other financial benefits owed to any other policyholder of CompSource Oklahoma.

D. Except as otherwise provided by law, any increase in the state payment rate for volunteer firefighters under the Volunteer Firefighter Group Insurance Pool shall not exceed five percent (5%) per annum. Any proposed change in rates for the Volunteer Firefighter Group Insurance Pool must be approved by the Board of Managers of CompSource Oklahoma with notice provided pursuant to subsection B of this section. CompSource Oklahoma shall not increase premiums for the Volunteer Firefighter Group Insurance Pool more than once per annum.

E. For purposes of this section, the term "volunteer fire departments" includes those volunteer fire departments which have authorized voluntary or uncompensated workers rendering services as firefighters and are created by statute pursuant to Section 592 of Title 18 of the Oklahoma Statutes, Sections 29-201 through 29-205 of Title 11 of the Oklahoma Statutes, and those defined by Section 351 of Title 19 of the Oklahoma Statutes.

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Oregon

656.027 Who are subject workers. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals, lodging or expenses.

656.031 Coverage for municipal volunteer personnel. (1) Except as provided in ORS 404.215, all municipal personnel, other than those employed full-time, part-time, or substitutes therefor, shall, for the purpose of this chapter, be known as volunteer personnel and shall not be considered as workers unless the municipality has filed the election provided by this section.

(2) The county, city or other municipality utilizing volunteer personnel as specified in subsection (1) of this section may elect to have such personnel considered as subject workers for purposes of this chapter. Such election shall be made by filing a written application to the insurer, or in the case of a self-insured employer, the Director of the Department of Consumer and Business Services, that includes a resolution of the governing body declaring its intent to cover volunteer personnel as provided in subsection (1) of this section and a description of the work to be performed by such personnel. The application shall also state the estimated total number of volunteer personnel on a roster for each separate category for which coverage is elected. The county, city or other municipality shall notify the insurer, or in the case of self-insurers, the director, of changes in the estimated total number of volunteers.

(3) Upon receiving the written application the insurer or self-insured employer may fix assumed wage rates for the volunteer personnel, which may be used only for purposes of computations under this chapter, and shall require the regular payment of premiums or assessments based upon the estimated total numbers of such volunteers carried on the roster for each category being covered. The self-insured employer shall submit such assumed wage rates to the

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director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The county, city or municipality shall maintain separate official membership rosters for each category of volunteers. A certified copy of the official membership roster shall be furnished the insurer or director upon request. Persons covered under this section are entitled to the benefits of this chapter and they are entitled to such benefits if injured as provided in ORS 656.202 while performing any duties arising out of and in the course of their employment as volunteer personnel, if the duties being performed are among those:

- (a) Described on the application of the county, city or municipality; and
- (b) Required of similar full-time paid employees.

(5) The filing of claims for benefits under this section is the exclusive remedy of a volunteer or a beneficiary of the volunteer for injuries compensable under this chapter against the state, its political subdivisions, their officers, employees, or any employer, regardless of negligence.

Rhode Island

§ 28-29-2 Definitions. – In chapters 29 – 38 of this title, unless the context otherwise requires:

- (4) "Employee" - The term "employee" also does not include a sole proprietor, independent contractor, or a person whose employment is of a casual nature, and who is employed other than for the purpose of the employer's trade or business, or a person whose services are voluntary or who performs charitable acts, nor shall it include the members of the regularly organized fire and police departments of any town or city; provided, however, that it shall include the members of the police and aircraft rescue and firefighting (ARFF) units of the Rhode Island Airport Corporation.

South Dakota

62-1-5. Fire department, ambulance service, and rescue squad volunteers--Employees of county, municipality, special purpose district, or township--Imputed wage. All persons providing voluntary service to a fire department, ambulance service, or rescue squad for any county, municipality, special purpose district, or township if regularly organized under the law shall be deemed employees of

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such county, municipality, special purpose district, or township while in the performance of their duties as members, if recommended by the person in charge to the governing body of such county, municipality, special purpose district, or township for membership and appointed by such governing body, and has not been removed by such governing body as members. For the purpose of computing compensation, the members shall be considered to be earning a wage that would entitle the members to the maximum compensation for death or injury allowable under this title. But in no event may payments to the members exceed the maximum limitations for benefits as set out in this title.

For purposes of determining compensation, any remuneration received by a member who voluntarily serves may not be considered.

Utah

34A-2-104. "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

(a) (i) an elective or appointive officer and any other person:

(A) in the service of:

(I) the state;

(II) a county, city, or town within the state; or

(III) a school district within the state;

(B) serving the state, or any county, city, town, or school district under:

(I) an election;

(II) appointment; or

(III) any contract of hire, express or implied, written or oral; and

(ii) including:

(A) an officer or employee of the state institutions of learning; and

(B) a member of the National Guard while on state active duty; and

(b) a person in the service of any employer, as defined in Section **34A-2-103**, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

(i) under any contract of hire:

(A) express or implied; and

(B) oral or written;

(ii) including aliens and minors, whether legally or illegally working for hire;

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and

34A-2-904. Volunteer emergency medical services providers -- Workers' compensation premiums.

(1) For purposes of receiving workers' compensation benefits, any person performing the services of an emergency medical services provider is considered an employee of the entity for whom it provides those services.

(2) (a) With regard to emergency medical services providers who perform those services for minimal or no compensation on a volunteer basis, and who are primarily employed other than as emergency medical services providers, the amount of workers' compensation benefits shall be based on that primary employment. Any excess premiums necessary for workers' compensation shall be paid by the entity that utilized that individual as an emergency medical services provider.

(b) With regard to emergency medical services providers who perform those services for minimal or no compensation or on a volunteer basis, and who have no other employment, the amount of workers' compensation benefits shall be the minimum benefit. Any premium necessary for workers' compensation shall be paid by the entity that utilizes that individual as an emergency medical services provider.

Vermont

§ 601. Definitions

(12) "Public employment" means the following:

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting in the line of duty, after the governing officials of such municipal body so vote;

(L) members of any regularly organized private volunteer fire department while acting in the line of duty after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting in the line of duty after election by the organization to have its members covered by this chapter;

Virginia

§ 65.2-101. Definitions.

As used in this title:

"Average weekly wage" means:

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer 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 community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$300.

"Employee" means:

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

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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.

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.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

2. "Employee" shall not mean:

k. Except as provided in subdivision 1 of this definition, a member of a volunteer fire-fighting, lifesaving or rescue squad when engaged in activities related principally to participation as a member of such squad whether or not the volunteer continues to receive compensation from his employer for time away from the job.

§ 65.2-102. Coverage of firefighters and law-enforcement officers in off-duty capacity.

A. Notwithstanding any other provision of law, a claim for workers' compensation benefits shall be deemed to be in the course of employment of any firefighter or law-enforcement officer who, in an off-duty capacity or outside an assigned shift or work location, undertakes any law-enforcement or rescue activity. Nothing in this section shall prohibit an employer from using any defense otherwise available under this title.

B. For purposes of this section:

"Firefighter" means all (i) salaried firefighters, including special forest wardens designated pursuant to § 10.1-1135, emergency medical technicians, lifesaving and rescue squad members, and arson investigators and (ii) volunteer firefighters and lifesaving or rescue squad members, if the governing body of the political subdivision in which the principal office of such volunteer fire company or volunteer lifesaving or rescue squad is located has adopted a resolution acknowledging such volunteer fire company or volunteer lifesaving and rescue squad as employees for purposes of this title.

West Virginia

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

(a) The State of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are required to subscribe to and pay premium taxes into the Workers' Compensation Fund for the protection of their employees and are subject to all requirements of this chapter and all rules prescribed by the Workers' Compensation Commission with reference to rate, classification and premium payment: *Provided*, That rates will be adjusted by the commission to reflect the demand on the compensation fund by the covered employer.

Definition of “Volunteer”

Additionally, “volunteer” is generally defined in the various state statutes. The firefighting industry, because it provides a public service, uses some governmental definitions to help it define the term. Section 203(e)(4) of the Fair Labor Standards Act defines a “volunteer” as one who volunteers to perform services for a public agency or civic organization for civic, charitable, or humanitarian reasons, and who does not expect to be compensated for those services.

The US Department of Labor (DOL) defines a volunteer as an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered. The DOL further states that an individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer. For example, a firefighter employed by a county-run system cannot be considered a volunteer at any other stations run by that county, unless they perform duties distinctly separate from those they are employed for.³ Note that this latter piece of the definition is somewhat controversial, and there have been attempts to change it.

LEGISLATION

The following chart shows examples of states that have passed volunteer firefighter legislation which impacted class ratemaking.

State	Class Codes	Bill
Alaska	7704, 7710, 7711	HB 200 (2007)
Colorado	7710, 7711	HB 1008 (2007)
Connecticut	7710	HB 5629 (2008)
Florida	7704, 7705, 7720	SB 746 (2007)
Maine	7704, 7710,	LD 621/PA 408

³ “The Fair Labor Standards Act: A Fire Department's Handbook,” as published on the National Volunteer Fire Council’s Web site: www.nvfc.org/flsahandbook.html.

	7711	(2009)
New Mexico	7710	SB 303 (2009)
Nevada	7711	SB 6 (2009)
Oregon	7710	HB 2420/LC 1336 (2009)

Recent Legislation

In 2011, several states considered legislation regarding volunteer firefighters. In addition, Montana, Nevada, Pennsylvania and West Virginia enacted laws impacting volunteer firefighters. The following is a summary of the state legislative activity:

Alabama – HB 600/SB 463 would have set the maximum annual payroll per fire fighter of a certified volunteer fire department or rescue squad member of a legally organized rescue squad that meets the minimum personnel and equipment standards as established by the Alabama Association of Rescue Squads, for the purpose of setting workers’ compensation rates for the departments, at \$300 per fire fighter or rescue squad member per year. This legislation did not pass before the 2011 session adjourned. However, similar legislation (SB 9), which requires the Insurance Commissioner to regulate the maximum annual payroll per firefighter for the purpose of setting workers’ compensation rates for volunteer fire departments or rescue squads, was pre-filed for the 2012 session.

SB 63 allows two or more volunteer fire departments certified by the Alabama Forestry Commission to enter into contracts or agreements to establish a Workers’ Compensation pool for payment of workers’ compensation claims; and allows the Department of Industrial Relations by rule to adopt requirements for the administration of a Workers’ Compensation pool including separation or commingling of funds, accounting, auditing, reporting, actuarial standards, and procedures.

Alaska - SB 103 amends the medical examination requirements for firefighters entitled to a presumption of compensability for a disability resulting from certain diseases. Amendments include, but are not limited to, addition of the following: a

firefighter who entered active service before 8/19/08, is entitled to the presumption of compensability if, before 8/19/08, the firefighter received all medical examinations provided by the department employing the firefighter and the examinations did not show evidence of the disease during the first 7 years of employment. The definition of “Firefighter” includes volunteers.

Arkansas - SB 727 amends the section that provides for the compensability of mental injury or illness for emergency providers and provides a definition of emergency responder (which includes volunteer firefighters).

California – AB 965 provides in the case of active firefighting members of certain fire departments, a compensable injury includes cancer that develops or manifests itself during the period when the firefighter demonstrates that he or she is exposed, while in the service of the public agency, to a known carcinogen and establishes a work-related presumption. The presumption extends to members of a department serving a U.S. government installation who adhere to specified training.

Massachusetts – HB 707 provides that payments for medical expenses incurred due to injuries suffered by fire fighters in the line of duty shall be made at the normal and reasonable rate paid by health insurance carriers.

HB 1597 requires that all injured firefighters receive medical treatment and rehabilitation therapy within 48 hours of notification to regulated facilities of such injuries, and that regulating authorities mandate a timely appeals process; provides that payments for medical expenses incurred due to injuries suffered by fire fighters in the line of duty shall be made at the normal and reasonable rate paid by health insurance carriers.

Michigan – HB 4838 authorizes interstate mutual aid for certain emergency responses, including volunteer firefighters.

Montana – House Bill 119 clarifies definitions and eligibility requirements for workers’ compensation coverage for volunteer firefighters. **The Governor signed House Bill 119 into law on March 25, 2011.**

HB 552 revises the workers’ compensation laws related to volunteer firefighters; allowing levies used to fund volunteer firefighters’ disability income insurance to

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be used alternatively for workers' compensation coverage. **The Governor signed House Bill 552 into law on April 21, 2011.**

HTR 38 is an **adopted Resolution** requesting Legislative Council to designate an appropriate interim or statutory committee to conduct a comprehensive study of local fire protection and emergency services, how those services are paid for, and benefits provided to paid and volunteer firefighters and emergency medical technicians, including workers' compensation, disability, and retirement. The committee will do the following:

- (1) review current structure and function of local fire protection agencies and emergency services;
- (2) examine how local governments pay for the various fire protection and emergency services in their jurisdictions;
- (3) review current benefits provided to paid and volunteer firefighters and emergency medical technicians by local governments and the financial capacity of the local governments to provide those benefits;
- (4) review legislation introduced during the 62nd Legislature intended to modify local fire protection and emergency services and firefighter and emergency medical technician duties, qualifications, and benefits, the reasons for the legislation, and the outcome of the legislation;
- (5) examine the Department of Natural Resources and Conservation's State-County Cooperative Fire Protection Program, the agreements entered into between the state and counties, and the coordination between the state and local governments for wildland fire protection;
- (6) examine the services local government firefighters and emergency medical technicians provide and how those services are reimbursed by citizens, insurance companies, and state and federal agencies;
- (7) examine the viability, necessity, and jurisdiction of the various local government fire protection entities provided for in state statute; and
- (8) determine whether modifications to statutes or state or local policies are warranted to achieve adequacy, consistency, and coordination in local government fire protection and emergency services and in the benefits provided to paid and volunteer firefighters and emergency medical technicians.

Nevada - AB 131 revises provisions governing certain occupational diseases; exempts claims of firefighters (including volunteers), police officers, arson investigators and emergency medical attendants from the requirement that a

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person must be incapacitated from earning full wages for at least 5 days within a 20-day period in order to receive compensation for disability.

AB 141 reduces the frequency with which volunteer firefighters 40 years of age or older must submit to physical examinations to receive workers' compensation coverage for diseases of the lungs from annually to once every two years. **The Governor signed AB 141 into law on May 27, 2011.**

New Jersey – AB 959 creates a rebuttable presumption regarding disability pension and workers' compensation eligibility for public employees and emergency personnel (including members of a volunteer fire department) participating in World Trade Center operations and disabled as the result of a qualifying condition or impairment of health which becomes manifest on or after the time of participation.

AB 1250/SB 1624 creates a rebuttable presumption of workers' compensation coverage for any death or disability, including post traumatic stress disorder, if the death or disability arises from the physical or psychological impact of stress or injury experienced by a public safety worker (including member of volunteer fire department) engaged in response to a terrorist attack, epidemic, or other catastrophic emergency, in which the worker is exposed to pathogens or biological toxins from biological warfare or epidemics, hazardous chemicals used in, or related to, chemical warfare, or cancer-causing radiation or radioactive substances, or witnesses death and suffering of a magnitude sufficient to cause significant psychological trauma.

AB 1566/SB 2660 creates a rebuttable presumption that cancer is a compensable occupational disease of the firefighter (including volunteers) for workers' compensation purposes if the firefighter was exposed to a carcinogen while in service of the department and the firefighter, at the time of the exposure did not fail to properly use department-provided safety equipment and follow safety procedures clearly made a requirement of employment, and did not willfully refuse to accept treatment.

AB 1595 grants workers' compensation coverage to volunteer firefighters going to or returning from their stations when called to a fire.

SB 1252 provides compensation to surviving spouses of members of the state police or members of fire or police departments or forces who die in the line of duty during the entire period of their survivorship, even if the spouse remarries. (This bill does not include language that explicitly includes or excludes volunteers from this provision. It does include references to calculation of benefits based on wages of the deceased.)

SB 1294 provides for workers' compensation benefits in the event of injury or death to fire, police, first aid, rescue or emergency management personnel, paid or volunteer, who assist in a "Law enforcement, public safety or medical emergency" within the State of New Jersey; establishes that the individual will be an employee of the State for the purpose of payment of workers' compensation benefits as opposed to the county, municipality or fire district by whom they may be regularly employed.

SB 1672 provides, from 7/1/11 forward, an annual COLA (to be paid from Second Injury Fund) in the weekly workers' compensation benefit rate for any surviving dependents of any public safety worker (definition includes members of volunteer fire department, force, company or district) who died in the line of duty after 12/31/79.

New York – AB 123 adds a new section that establishes the payment of certain volunteer firefighter death benefits be within 90 days of the filing of application to receive such death benefit.

AB 181 establishes a volunteer firefighters' benefit claim assistance unit to assist volunteer firefighters who sustain a life threatening injury, or in the case of death, their surviving dependents in filing claims and expediting payment of benefits.

AB 2804/SB 1929 increases weekly PTD benefits for volunteer firefighters and ambulance workers from \$400 to \$450.

AB 3194/SB 2454 provides for a COLA for PTD benefits received by disabled volunteer firefighters; benefits received 1/1/12 will adjusted annually on 2/1 by the percent increase in the previous year's CPI; the increase paid will be reimbursement from the special fund for reopened cases commencing one year from the date of the first such payment and annually thereafter while such payments continue.

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SB 273 directs the commissioner of health to establish, promote and maintain a bladder cancer screening program for firefighters to encourage firefighters to seek medical care for prevention or treatment of any malignant conditions resulting from occupational exposure to hazardous materials. (This bill does not include language that explicitly includes or excludes volunteers from this provision.)

SB 5624 updates physical fitness benefits for volunteer firefighters and mandates that TD benefits for injuries to volunteer firefighters on or after July 1, 2011, are \$500 per week.

SB 5625 entitles a volunteer firefighter or ambulance worker to certain benefits under the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law when such volunteer provides services when there is no jurisdictional officer in command present.

Oklahoma - HB 1084 provides that emergency medical technicians or other direct providers of emergency services who are diagnosed by a licensed psychiatrist with post-traumatic stress disorder will be entitled to, but not limited to, psychiatric or psychological counseling as well as any medical treatment associated with the condition; provides a presumption that an emergency medical service provider suffering from post-traumatic stress disorder, or other similar condition, incurred the condition as a result of employment. (No definition for "direct provider of emergency services" was found, therefore, one may assume firefighters and/or volunteers could be considered providers of those services.)

Pennsylvania – HB 522 modifies the definition of "employee" for purposes of the workers' compensation law to include volunteer firefighters who serve "for another department or company" during off duty hours.

HB 630 includes language that makes it unlawful for an employer to discipline, terminate, or otherwise discriminate against an employee-volunteer with respect to compensation, hire, tenure, terms, conditions or privilege of employment because the employee-volunteer has been injured in the line of duty as a member of a volunteer emergency service organization and has subsequently

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returned to work, regardless of whether the employee-volunteer received any workers' compensation benefits.

HB 780 provides that a municipality or an area of a municipality which receives emergency services pursuant to a contract, standing agreement or arrangement from a volunteer emergency service provider located in a host municipality shall reimburse, not later than 7 days prior to the premium due date.

HB 797/SB 654 further defines "occupational disease" and provides for cancer in the occupation of firefighter (including volunteers). **The Governor signed HB 797 into law on July 7, 2011.**

Rhode Island – SB 967 subjects public safety employees injured on duty to the workers' compensation procedures and workers' compensation court for purposes of resolving benefit disputes.

West Virginia - HB 3271 creates a workers' compensation insurance subsidy program for volunteer fire departments; establishes a special program within the Auditor's Office; grants authority to the Auditor to administer the program; designates a funding formula for distribution of moneys allocated; grants rule-making authority to administer this section; requires report to the Legislature. **The Governor signed House Bill 3271 into law on April 4, 2011.**

Federal Legislation

On July 22, 2011, Congress introduced H.R. 2630, the "Volunteer Firefighter Fairness Act of 2011," which amends the Internal Revenue Code of 1986 to clarify the treatment of emergency service volunteers as independent contractors.

TREATMENT OF VOLUNTEER FIREFIGHTERS IN INDEPENDENT BUREAU STATES

NCCI surveyed the Independent Bureau states to learn how they determine premium for volunteer firefighters. Four states – Minnesota, New York, Pennsylvania and Wisconsin – base premium on population size. California uses a per capita basis, and New Jersey bases premium on \$1300/year for each

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active volunteer firefighter, subject to a maximum payroll for each company based on the number of pieces of apparatus. The following information was provided by the Independent Bureau states:

California - In California, the classification for volunteer firefighters has a directive footnote:

FIRE FIGHTERS — volunteers, serving with or without remuneration 7707

The exposure for this classification shall be on a per capita basis. As of January 1, 2011, the pure premium rate that applies on a per capita basis is \$181.91.

Delaware - The Workers Compensation Act provides that volunteer firefighters are treated as employees of the State. The State of Delaware is self-insured. According to Delaware Code Section 2312, the wage of volunteer firefighters on which compensation is based shall be the wage received in the regular employment of such firefighters.

Indiana - Indiana uses a \$300/volunteer amount if the firefighters are not paid. However, the firefighters can be paid up to \$20,000/year and still be considered volunteers if they work for a volunteer fire company. Fire Chiefs or other persons who have special duties are sometimes paid these “nominal” (**IC 36-8-12-2b**) amounts. If a volunteer firefighter is paid, their actual pay is used as the premium basis.

Massachusetts - Generally, volunteer firefighters are not covered under the Massachusetts workers' compensation act. The following is the Massachusetts state addendum for Code 7704 in NCCI's **Scopes[®] Manual: (MA) State Addendum**: Regular members of fire departments employed by, or volunteer members associated with, municipalities, townships, counties or the Commonwealth of Massachusetts, with exception of private duty details, are subject to M.G.L. Chapter 41, Section 111F, and therefore are not generally covered under the Massachusetts Workers' Compensation Act, Chapter 152. It is the carrier's responsibility to determine if the firefighters are employees or excludable municipal employees for workers compensation purposes with respect to private duty details. If it is determined that the firefighters are employees, the carrier should determine premium in accordance with Rule V— Premium Basis of the MA Manual.

Please see the following footnote for Code 7704 in MA: *When part-time or volunteer firefighters are employed, the actual pay of all such persons shall be included with the payroll of regular firefighters in computing the premium. In no case, however, shall the payroll of any such firefighter be taken at less than \$300 per person per annum.*

Michigan - In Michigan's residual market, firefighters are Code 7704 (or 7904 if the Waiver of Coordination of Benefits is used). The manual entry for remuneration is as follows : When part-time or volunteer firefighters are employed, the actual remuneration of all such persons shall be included with the payroll of regular firefighters in computing the premium. In no case, however, shall the remuneration of any such firefighters be taken at less than \$400 per person per year.

Minnesota – According to the Minnesota Basic Manual, cities, towns and villages having volunteer fire departments shall be charged a flat premium, the flat premium to be based upon the rate for Code 7708 multiplied by the nearest hundred of population for the area served according to the latest national census. In areas where the latest national census figures are unrealistic, the population used in determining premium will be on a negotiable basis between the municipality and the carrier. Paid firefighters will be charged the rate for Code 7706 subject to an applicable minimum premium.

For the purposes of determining premium for Code 7708 in those cases where the fire department includes both paid and volunteer firefighters, the population figure for the municipality shall be reduced fifteen hundred for each full-time paid firefighter employed. If the fire department includes both paid and volunteer firefighters, the premium for the risk shall be the sum of the premiums computed separately for the volunteer and paid firefighters as indicated above.

Code 7708 includes volunteer firefighters who also perform emergency medical services.

New Jersey - In New Jersey, Volunteer Firefighters are specifically included for benefits by statute. Premium development is based on \$1,300 per annum for each active volunteer, subject to a maximum payroll for each fire company based on number of pieces of apparatus. For example, a company with 3 pieces of apparatus would be subject to the per annum payroll for each active volunteer

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member (maximum payroll - \$83,200). The 2011 rate is \$26.57. In a case where there are both paid and volunteer members, paid members are subject to Code 7710 (2011 rate - \$4.45). Manual provisions are as follows for both voluntary and residual markets:

FIREMEN—VOLUNTEER & DRIVERS7711

Includes authorized construction, installation, alteration, maintenance or repair work upon premises, apparatus or other equipment owned or used by the fire company, participation in any authorized public drill, showing, exhibition or parade and, when authorized, rendering of assistance in connection with events affecting the public health and safety.

The payroll for volunteer firemen for each fire company shall be the amount determined by applying \$1,300 per annum to each active volunteer fireman (whether exempt or not) but to no others, subject to the maximums stated below.

No. of Pieces of Apparatus	Maximum Payroll Per Company for Volunteers
1	\$36,400
2	59,800
3	83,200
4	101,400
5	119,600
6	137,800
7	156,000
8	174,200
9	192,400
10*	210,600

*Maximum payroll for companies with more than ten pieces of apparatus may be secured from the Rating Bureau.

The Information Page shall show for each company (1) the number of pieces of apparatus and (2) the number of volunteers.

New York - Statutory group coverage is provided as a separate policy (WC 31 00 01 A) and is primarily based upon population size.

The Loss Cost basis is as follows:

Code 7711 – “Firefighters—Volunteer—& Drivers” – **based on Population;**

Code 7716 – “Firefighters—Volunteer—& Drivers—Elective Coverage for Assistance From Individual Volunteer Firefighters” – **Per Policy basis** (Available only for a political subdivision (county, city, town, village or fire district) which has a paid fire department insured under Code 7710 “Firefighters-Not Volunteer-& Drivers.”).

The topic is further explained in the Manual under Rule II - EXPLANATION OF COVERAGES AND METHODS OF INSURING, Item F, Page R-5. The text for this item is as follows:

F. VOLUNTEER FIREFIGHTERS COVERAGE

1. Description of Coverage

The Volunteer Firefighters' Benefit Law Policy provides coverage for the statutory obligations required under the New York Volunteer Firefighters' Benefit Law. In addition, this special policy must provide employers liability coverage comparable to Part Two of the Standard Policy. The Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement (WC 00 04 21C) and Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22A) must also be attached to each policy.

2. Group Insurance

The Volunteer Firefighters' Benefit Law (VFBL) contains provisions that allow for group insurance. Under Section 32.1 of the VFBL, any town may obtain a single policy covering all fire protection districts and fire alarm districts within the town. Under Section 32.2, a group policy may be issued to a group of cities, villages, fire districts or town boards located within one county. Section 32.2 group insurance requires that:

- a. the governing board of each member fire district resolves to be insured under the group policy, and that each such resolution be filed with the chairman of the county board of supervisors;

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- b. the group file with the chairman of the county board of supervisors an agreement executed by each member fire district agreeing to the effective date of the policy and the population of each fire district;
- c. the chairman of the county board of supervisors contract for a policy of insurance covering the group's members;
- d. the cost of such insurance be apportioned among the group's members based on population; and
- e. the county treasurer pay for the cost of such insurance.

The New York Insurance Law also contains provisions for group insurance under Section 3435 provided group members are either public entities or Type B not-for-profit organizations. The Insurance Law and Regulations require:

- a. the group to be homogenous in nature;
- b. the group to be formed for purposes other than obtaining insurance; and
- c. the group to consist of at least ten members; or a smaller group of at least five members provided that each member generates at least \$5 million in annual revenue or the annual premiums for all lines of such group exceeds \$500,000.

Refer to Section 32 of the Volunteer Firefighters' Benefit Law, Section 3435 of the New York Insurance Law and 11 NYCRR 153 of the New York Insurance Law Regulations for all provisions required for group insurance.

3. Premium

The premium for the Volunteer Firefighters' Benefit Law Policy is a flat charge which varies on the basis of the population of the area(s) served when a single policy is issued or when a single policy of group insurance is issued covering all fire protection districts and fire alarm districts within the town. When a group policy is issued covering a group of cities, villages, fire districts or town boards located within one county, the population of all members of the group may be aggregated to determine the group policy premium. Refer to the volunteer firefighters section in Part Three – Loss Costs for an explanation of procedures and charges for this coverage.

Pennsylvania – Volunteer firefighters are subject to Code 994. The rating values for volunteer fire companies are presented as a schedule of per company charges based on the population served as follows:

<u>Population</u>	<u>Annual Loss Cost</u>
Up to 300	1,840
301 -500	2,259
501 -700	2,628
701 -1000	3,038
1001 -1500	3,573
1501 -2000	4,150
2001 -2500	4,642
2501 -3000	5,079
3001 -3500	5,464
3501 -4000	5,827
4001 -4500	6,164
4501 -5000	6,488
5001 -5500	6,802
5501 -6000	7,101
6001 -6500	7,399
6501 -7000	7,688
7001 -7500	7,967
7501 -8000	8,246
8001 -8500	8,515
8501 -9000	8,779
9001 -9500	9,035
9501 -10000	9,285
10001 -15000	10,656
15001 -20000	13,029
20001 -25000	15,360
25001 -30000	17,665
30001 -35000	19,934
35001 -40000	22,171
40001 -45000	24,371
45001 -50000	26,534
For each additional 5,000	2,170

Wisconsin – Code 7709 is used for volunteer fire departments. The premium for this classification is based on population. According to the Wisconsin Compensation Rating Bureau, the population of the area served is based on the latest available census data, and includes not only the population of the city, town, township, etc. where the department is located, but also the population of any area serviced under a fire protection contract or similar agreement. The Code includes volunteer firefighters who also perform emergency medical services.

Effective October 1, 2010, the rate per population is as follows:

<u>Population Size</u>	<u>Rate</u>
0--300	\$870
301—500	\$983
501—700	\$1087
701—1000	\$1200
1001 -1500	\$1407
1501 -2000	\$1632
2001 -2500	\$1859
2501 -3000	\$2087
3001 -3500	\$2315
3501 -4000	\$2543
4001 -4500	\$2771
4501 -5000	\$2996
5001 -6000	\$3395
6001 -7000	\$3852
7001 -8000	\$4310
8001 -9000	\$4762
9001 -10000	\$5217
10001-15000	\$7019
15001-20000	\$9302
20001-25000	\$11,580
Each additional 5000 (or portion of)	\$2278

OPTIONS

Based on the research provided in this report, there is a clear and long-standing inconsistency between the calculation of benefits for injured volunteer firefighters and the determination of an appropriate exposure base/basis of premium and resulting premium for volunteer firefighters. As stated earlier in this report, most states set a \$300 annual minimum payroll for the purposes of calculating workers compensation premium. At the same time, benefits are calculated in a wide variety of ways, but all use a higher exposure base (Examples: Iowa – regular employment pay or 140% of SAWW, Montana – minimum wage x 2,080 hours per year, Nevada - \$2,000 per month).

The actions taken in 2007 to separate the classification of volunteer firefighters from paid firefighters will be useful in separately tracking the loss experience for volunteer firefighters. However, a measurable, verifiable and accurate exposure base/basis of premium is needed to assure an equitable and consistent premium calculation that will result in premium commensurate with the loss exposure for this classification. In addition to modifying the exposure base/basis of premium for volunteer firefighters, consideration should be given to the option of calculating separate loss costs/rates for paid and volunteer firefighters in order to capture the difference in loss exposure and risk inherent in these jobs.

Various implementation options can be utilized to minimize the initial premium impact on individual policies and/or maintain premium neutrality overall.

There are several exposure base alternatives to consider in lieu of actual payroll. It should be noted that the majority of these alternatives would require that separate loss costs/rates be calculated for volunteer firefighters as they are not comparable to the exposure base used for paid firefighters.

Exposure Base Alternatives for Volunteer Firefighters:

- State Average Weekly Wage (SAWW)/Multiple of SAWW:
 - A number of states use the SAWW for calculating benefits for volunteer firefighters, making it a reasonable proxy for the exposure

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base and better aligning the exposure base with benefit calculations.

- SAWW is verifiable and inflation-sensitive.
- The average SAWW of NCCI states based on the latest SAWW available as of 8/6/11 is approximately \$800.00.

- Per Capita/Per Volunteer:
 - By utilizing a minimum payroll of \$300 annually, most states are essentially already treating volunteer firefighters as a per capita classification.
 - Volunteer rosters are typically maintained by the fire department.
 - Does not closely align with the determination of benefits, which are based on some form of actual payroll or proxy for payroll.
 - Is not inflation-sensitive.
 - The number of volunteers may change during the term of a policy.

- Hours Worked:
 - Measures exposure time of volunteers.
 - Is not a verifiable record of exposure.
 - May be difficult for fire departments to track.
 - Is not inflation-sensitive.
 - Does not closely align with the determination of benefits, which are based on some form of actual payroll or proxy for payroll.
 - Requires precise definition of what qualifies as working time.

- Number of Fire Calls:
 - Measures firefighting exposure.
 - May be independently verifiable by carriers if such records are required to be maintained by law and are open to review and verification.
 - Does not measure the number of volunteers exposed to injury.
 - Does not closely align with the determination of benefits, which are based on some form of actual payroll or proxy for payroll.
 - Is not inflation-sensitive.
 - Requires precise definition of what qualifies as a call.

- Population of Area Being Served:

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- Easily determined and verified by census surveys.
 - There may not always be a direct relationship between population served and volunteer exposure to injury or number of volunteers.
 - Does not closely align with the determination of benefits, which are based on some form of actual payroll or proxy for payroll.
 - Is not inflation-sensitive.
- Number of Apparatus:
 - Easily determined and verifiable at specific points in time.
 - Number of fire trucks may change during the term of the policy.
 - Proxy for number of volunteers.
 - Does not closely align with the determination of benefits, which are based on some form of actual payroll or proxy for payroll.
 - Is not inflation sensitive.

Market-Exposure Alternatives:

This research paper explores various options for determining exposure in calculating the voluntary market and residual market loss costs/rates for volunteer firefighters. In doing this research, two recent methods for handling the volunteer firefighter exposure were noted that may be valuable resources for other states to explore.

- Oklahoma – Volunteer Firefighters Group Pool statute.
- Louisiana – State fire marshal chose to obtain one policy to cover all volunteer firefighters.

REGULATORY/LEGISLATIVE CONSIDERATIONS

- Who should pay for volunteer firefighter coverage?
- How should premium be determined?
- What is the appropriate exposure base?
- Can volunteer fire department rosters or other reporting requirements be mandated to ensure accuracy?

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