



RISK MANAGEMENT INFORMATION
PROVIDING ASSISTANCE IN EMERGENCIES
Coverage and Liability Issues

When disaster strikes in Minnesota, the response is always the same. Cities and other local governments around the state pitch in to help, sending equipment and crews of firefighters, police officers, public works and utilities workers, building inspectors, and whatever other help is needed. We see that same spirit of emergency assistance sometimes reaching beyond the borders of Minnesota, whether that means helping out with floods in Iowa or sending assistance to the coastal states impacted by a hurricane.

Providing and receiving disaster assistance raises some coverage and liability issues for Minnesota cities, some of which can be different when you're responding out of state. This memo outlines applicable statutes, summarizes how the city's LMCIT coverage would apply, and identifies some potential problems that cities need to be aware of. There's also a checklist of potential coverage issues in emergency assistance situations.

Providing assistance within Minnesota – the local emergency assistance statute

Minn. Stat. 12.331 was first passed as part of the tornado relief bill in 1998. You could think of this law as a “default” mutual aid agreement for disasters. It clarifies local governments' authority both to request and to provide emergency assistance without an existing mutual aid agreement, and addresses the liability issues that can arise from emergency assistance.

12.331 sets out the following rules for when one political subdivision in Minnesota sends assistance to another Minnesota public body in an emergency. Throughout this memo we'll refer to cities, but this statute also applies to counties, towns and other political subdivisions.

- *Workers' compensation.* For purposes of workers' compensation, the sending city's employees are deemed to be acting within the scope of their duties as employees of the sending city. An injury to an employee of a city providing assistance would therefore be covered under his or her own city's work comp coverage.
- *Liability.* For purposes of tort liability, employees of the city sending assistance are deemed to be employees of the city receiving assistance. It would therefore be the responsibility of the

Learn More

Read more about emergency assistance in:

*Handbook for Minnesota Cities:
Part IV*

It's available at www.lmc.org.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

city receiving the assistance (and that city's liability carrier) to defend and indemnify the sending city's employee if that employee were sued for activities while providing the assistance. This provision eliminates much of the potential for conflicts between the two cities if both were sued in a tort claim arising from the emergency assistance.

- *Equipment.* Damage to the sending city's equipment is the sending city's own responsibility.

12.331 also provides the city receiving assistance must reimburse the city sending assistance for the compensation of the sending city's employees, for those employees' travel and maintenance expenses, and for any supplies used.

Keep in mind these statutory provisions only apply if there's not a written agreement between the two cities to address these points. If the sending and receiving cities prefer to handle any of these considerations differently, they can simply develop and sign a written agreement with terms more suitable to their needs.

How does LMCIT coverage work when one Minnesota city provides emergency assistance to another under 12.331?

We'll have to simplify some detailed coverage provisions, but the general way things work follow.

- Injuries to the sending city's employees while assigned to provide emergency assistance in another city will be covered under the sending city's LMCIT workers' compensation coverage. This is because employees responding to another city's emergency are doing so at the direction of their employer, the sending city.

Employees who "self deploy" to an emergency in another city may not be afforded this same protection – a point cities should specifically call out to those groups of employees who are most often asked to assist somewhere else (i.e. firefighters, police officers, and emergency medical responders). The message is simple – deciding on your own to respond in another community's emergency is never a good idea. Doing so can be dangerous for you, can create liability problems for both cities involved, and often leads to disruptive confusion in situations that are already chaotic.

- Damage to any vehicles or equipment from the sending city will be covered by the sending city's LMCIT property or auto physical damage coverage, just as if the equipment were being used for any other city purpose.

Learn More

Read more about LMCIT coverages in:

- *Things to Think About When Renewing Your City's Property/Casualty Coverage*
- *Things to Think About When Renewing Your City's Workers' Compensation Coverage*

They're available at www.lmc.org.

- LMCIT liability coverage for the receiving city will respond to liability claims against the sending city's employees that arise in the course of providing emergency assistance. This is because employees of the sending city are deemed to be employees of the receiving city for tort liability purposes under 12.331.
- For auto liability claims that arise from using the sending city's licensed vehicles in providing emergency assistance, both cities' coverage could theoretically apply. Where both cities are LMCIT members, LMCIT will treat the receiving city's LMCIT auto liability coverage as primary in this situation.
- In many cases, the city providing assistance will send vehicles and equipment, along with employees to operate them. In those cases, the vehicle is not considered to be a "borrowed" vehicle for the city that's receiving the assistance, and that vehicle is therefore not covered by the receiving city's auto physical damage coverage. Damage to the vehicle or equipment would be covered under the sending city's auto physical damage coverage.

The vehicle is considered a "borrowed" vehicle only if it's being operated by and is in the care, custody, and control of, the city receiving assistance. If that's the case – a city sends its vehicles to be operated by the receiving city's employees or volunteers – then the receiving city's auto physical damage coverage is primary.

- When a city employee operates his or her own vehicle on city business, including responding to an emergency in another community, that vehicle is not considered to be a "borrowed" or "leased" vehicle. The receiving city's auto physical damage coverage through LMCIT therefore won't cover damage to the vehicle; nor will the sending city's LMCIT coverage. Physical damage to an employee's car is at his or her own risk, just as it would be in his or her own city limits.

What if my city borrows or rents vehicles or equipment from someone who is not a LMCIT member city?

The city's LMCIT municipal liability and auto liability coverage will automatically respond to liability claims arising from the operation of vehicles or equipment that the city borrows or rents in an emergency. It is not necessary to schedule each individual vehicle in order to have coverage.

LMCIT blanket property coverage would cover any physical damage to vehicles or equipment you borrow or rent, up to a sublimit of \$500,000, as long as the equipment is in the city's care, custody and control. There are a few cities who choose not to cover their small-value equipment at all. If your city doesn't have coverage for its own small-value mobile property, you don't have coverage for small-value equipment you borrow or lease either.

What happens if we provide emergency assistance under a mutual aid agreement with different provisions from the statute?

It really depends on what the mutual aid agreement says. If the mutual aid agreement between the two cities is silent about workers' compensation, tort liability, or damage to equipment, the provisions of the statute apparently would still apply on that particular issue. If the agreement specifically addresses any or all of those matters differently from the way the statute handles them, the terms of the agreement would govern.

If both cities are LMCIT members, liability and auto liability coverage shouldn't be a problem. Regardless of how the mutual aid agreement addresses tort liability, each city's respective LMCIT coverage would pick up whatever liability the city has under the agreement. That would include liability for its own employees' acts and any tort liability the city assumes under mutual aid agreement for the other city's employees' acts.

LMCIT strongly suggests cities avoid using mutual aid agreements which have language like "each party shall be responsible for its own liability." Although it may sound like a fair allocation of risk, this language sets up the potential for a defense conflict between the two cities if both are sued for a single incident. Under a contract provision like this, when a plaintiff sues both cities for their combined emergency response, the goal for each city becomes to show that the other city was more liable and should therefore pay the claim. This kind of conflict can reduce both cities' chances of successfully defending the plaintiff's claim. In addition, each city will need its own defense attorney, resulting in greater legal expenses all around.

If a mutual aid agreement makes your city responsible for workers' compensation benefits for another city's employees, you need to contact LMCIT. There may be an additional premium charge to your city for this kind of additional workers' compensation exposure.

What about emergency volunteers?

So far, we've talked about the implications of one city's employees providing assistance in another community's disaster. But we know that volunteers may also provide critical help in emergency situations.

Minn. Stat. 12.22 subd. 2a, says that a city volunteer assisting a city in a disaster or emergency is considered a city employee, if the volunteer:

Model Mutual Aid Agreement

View a model agreement in:

LMCIT Model Mutual Aid Agreement

It's available at www.lmc.org.

Learn More

Read more about covering volunteers in:

Accident Coverage for City Volunteers

It's available at www.lmc.org.

- Is registered with the city; and
- Is working under the direction and control of the city.

A registered city volunteer who is injured while assisting in a disaster would therefore be entitled to workers' compensation benefits. LMCIT's practice has been not to charge any additional premium for this workers' compensation exposure.

Like any city volunteers, disaster volunteers are automatically "covered parties" under the city's LMCIT liability coverage. Thus for LMCIT member cities, LMCIT would cover liability claims against a registered emergency volunteer working under the city's direction and control.

These volunteers do not need to be reported to LMCIT. However, because the statute specifies that emergency volunteers must be "registered", the city should maintain a record of the individuals that provide volunteer help to the city in an emergency (or at any other time for that matter). If an injury occurs, the LMCIT work comp claims staff will need that record to determine whether or not the individual is covered.

What about other political subdivisions or cities that aren't LMCIT members?

Obviously, we're only in a position to tell you how the city's LMCIT coverage works. If you're not an LMCIT member, talk to your insurer about work comp, liability, and equipment coverage. Make sure your insurer will cover whatever exposures you have, whether you're operating under the statute or under an agreement. Make sure too that you understand what items or exposures you need to report to your insurer, and what the added coverage will cost.

Similarly, if your city receives assistance from a political subdivision that's not an LMCIT member, make sure that that political subdivision is aware of these various coverage and liability issues and has addressed them appropriately with their own carrier.

Providing help outside of Minnesota

Sometimes a Minnesota city is called to help in an emergency outside the state. Sending help to other states is of course very valuable to their disaster response needs, and may also provide some important "real life" training to local responders.

Cross-border assistance

It's common in border communities to have mutual aid agreements that cross state lines. This is a perfectly okay practice and the provisions of that contract will control the arrangement, just as it would if both cities were in Minnesota.

It may sometimes be the case where a city in another state calls a Minnesota city directly to provide assistance, but the two cities don't have an existing mutual aid arrangement. Again, this is probably most common in border communities. This scenario can be a bit tricky, because state laws may differ in terms of how liability and workers' compensation issues are handled. In

addition, things like immunity defenses, tort cap limits, or work comp benefits may also be different in another state.

In short, it's just not a good idea to provide one-to-one emergency assistance outside Minnesota without a written agreement already in place. LMCIT staff will be glad to work with member cities on developing such agreements. If you have resources that are so particularly unique that you are often called by communities outside Minnesota, you should check in with the Minnesota Duty Officer about how best to manage those resources and you should probably consult with your city attorney to develop a standard agreement for sending resources outside Minnesota in an emergency.

Interstate assistance under EMAC

There's another important way Minnesota cities might provide assistance outside the state's borders. The state of Minnesota, along with all other states, participates in the Emergency Management Assistance Compact (EMAC). EMAC is an inter-state agreement which each state adopts by statute – here it's Minn. Stat. 192.89 – in order to provide an orderly mechanism through which emergency assistance can be requested and offered. EMAC is coordinated by the National Emergency Management Association. More information about EMAC can be found at www.emacweb.org.

Although EMAC is a state-to-state arrangement, it's often the case that much of the actual emergency assistance is provided by local government employees rather than by state employees. EMAC contemplates that inter-state assistance by local governments will be requested, coordinated, and dispatched through the state emergency management office. In Minnesota, the state Department of Homeland Security and Emergency Management (HSEM) performs that function. More information about HSEM's role in EMAC can be found at www.hsem.state.mn.us.

When EMAC is activated, HSEM is notified of any need for assistance and HSEM in turn notifies local responders. The city providing assistance will sign an intergovernmental agreement with HSEM that specifies the terms and conditions under which assistance will be provided outside Minnesota.

Both Minn. Stat. 192.91 and the current version of HSEM's intergovernmental agreement provide that the city's employees are deemed to be state of Minnesota employees for purposes of tort liability. This provides two important protections for city employees responding under EMAC.

- It gives city employees immunity for liability claims arising from their acts or omissions while providing disaster assistance to another state. There's an exception for "willful misconduct, gross negligence, or recklessness."
- It provides that city employees providing inter-state disaster assistance under EMAC are considered agents of the requesting state for tort liability and immunity purposes. This

basically makes the requesting state responsible to defend and indemnify the sending city's employees if they're sued.

In most cases therefore, liability should not be a concern for a city providing assistance in another state under EMAC. However, if it were to somehow happen that there was a liability claim against an LMCIT member city which was not handled by the state that was receiving the assistance, the city's LMCIT liability coverage would respond to that claim, just like any other liability claim against the city.

As is the case with providing assistance within the state of Minnesota under the emergency assistance statute, the sending city remains responsible under workers' compensation laws for their employees' injuries. A city's LMCIT work comp coverage would continue to apply under an EMAC response.

EMAC also provides for the state receiving assistance to reimburse the party providing assistance for damage to the assisting party's equipment. If for some reason an LMCIT member city wasn't reimbursed by the receiving state for damage to its equipment or vehicles, the city's LMCIT property and/or auto physical damage coverages would apply, just as with any other instance of damage to city vehicles or equipment.

The provisions of EMAC and associated HSEM intergovernmental agreements offer responding cities some very important protections. It is therefore imperative that city employees NEVER self-deploy to an emergency outside Minnesota. In the words of HSEM, "If you respond on your own, you are on your own."

Disaster assistance – a coverage checklist for cities

If your city is either receiving assistance in a disaster or providing assistance to another city in a disaster, here's a checklist to help identify potential coverage problems:

1. *Is assistance being provided under the statute or under an agreement?*

If both the sending and receiving cities are LMCIT members and you're working under Minn. Stat. 12.331, providing or receiving disaster assistance doesn't create any particular coverage problems for either city. Both cities' existing LMCIT liability, property, auto, and workers' compensation coverages will address their respective risks under the statute.

If you are instead responding under an existing mutual aid agreement, the terms of that contract will apply. It's a good idea to review the terms of existing mutual aid agreements in light of the information provided in this memo, and in consultation with your city attorney.

Contract Review Service:

If you're not sure about a particular contract, LMCIT will review it to help ensure that the contract's insurance and liability provisions adequately protect the city's interests.

Send contracts to Chris Smith at csmith@lmc.org or Tracie Chamberlin at tchamberlin@lmc.org.

2. *Is either the sending or the receiving party a non-LMCIT member?*

If you're receiving assistance from a county or township, or from a city that isn't an LMCIT member, you'll want to make sure they understand that under the statute, they're responsible for work comp for injuries to their employees, and for any damage to their equipment.

If you're providing assistance to a city or other unit that isn't an LMCIT member, you'll want to make sure that they and their liability carrier understand that they are responsible for liability claims arising from your employees' activities.

3. *Is the city borrowing or leasing any vehicles?*

LMCIT member cities automatically have liability coverage and coverage for physical damage to any vehicle the city rents or borrows.

4. *Is the city using volunteers?*

If your city is using volunteers who are acting under your direction and control, those volunteers need to be "registered" with the city in order to be covered by the city's workers' compensation and liability coverage. In other words, keep a list of your disaster volunteers, by name.

5. *Does a mutual aid agreement make you responsible for work comp for anyone else's employees or volunteers?*

If an agreement makes your city responsible for providing workers' compensation coverage for anyone who is not by law your city's employee, contact LMCIT right away – preferably before you sign the agreement.

6. *Does a mutual aid agreement require you to provide liability coverage for anyone else or name them as a covered party?*

If the agreement calls for you to add another city or other person or entity as an "insured" or a "covered party," contact LMCIT.

7. *Are you responding outside the state of Minnesota?*

If you are providing assistance outside Minnesota, you should be doing so either under a specific written mutual aid agreement or through EMAC as deployed by HSEM. Never self-deploy to any emergency, whether or not outside of Minnesota.

If your city is working under an agreement rather than under the statute in either providing or receiving disaster assistance, make sure you understand your responsibilities under that agreement. It's a good idea to have your city attorney review all mutual aid agreements.

Questions?

If you have any questions about coverage, please give us a call. We understand that when you're dealing with a disaster, the last thing you need is to be worrying about arcane details of coverage. We'll do our best to answer your questions and address any problems as quickly as we can.

Feel free to contact Ann Gergen, LMCIT Associate Administrator; Chris Smith, Risk Management Attorney; or any of the underwriters at the LMCIT office.

Ann Gergen 09/08