

EMERGENCY VOLUNTEER LEGAL PROTECTIONS

Definitions and Concepts Explained

Definitions

“Health care provider” (ORS 401.651):

- An individual licensed, certified, or otherwise authorized or permitted by the laws of this state or another state to administer health care services in the ordinary course of business or practice of a profession; and
- A person entered in the emergency health care provider registry under ORS 401.658.

“Qualified Emergency Service Volunteer” (401.358).

- Registered with the Office of Emergency Management or other public body to perform emergency service activities;
- Acknowledged in writing as a qualified emergency service volunteer, at the time the person offers to volunteer during an emergency, by the Office of Emergency Management or by another public body;
- A member of the Oregon Civil Defense Force; or
- A building evaluator certified under the Oregon Safety Assessment Program established under ORS 401.256.

“Public body”

- State government bodies, local government bodies and special government bodies.

Other Concepts

Agent of the state: Like being a state employee and if sued, state represents & pays damages, if awarded (subject to acting within scope and course of duties)

Indemnify: To hold harmless

Liability Risk: The possibility of getting sued for something you did or didn't do when responding to an emergency

Tort claim: A demand or lawsuit seeking money damages

Qualified Emergency Services Volunteer Protections

Criteria for Protection

- Must meet the definition of a qualified emergency services volunteer (QESV)
- Must be:
 - Performing emergency service activities *under the direction of the public body* during a Governor's declared emergency or Governor's declared public health emergency; or
 - Engaged in training *conducted or approved by a public body* for the purpose of preparing the volunteer to perform emergency services
- Must be acting with the course and scope of the volunteer's duties

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Who is Responsible for a QESV's Indemnification (tort liability)?

ORS 401.364

- A QESV is an agent of a public body under the Oregon Tort Claims Act (OTCA) for the purpose of acts and omissions of the volunteer that are within the course and scope of the volunteer's duties.
A public body shall defend, save harmless and indemnify a qualified emergency service volunteer as required by ORS 30.285.

Who is Responsible for a QESV's Workers' Compensation Protection?

ORS 401.368

The Oregon Department of Emergency Management provides workers' compensation coverage for QESVs who are injured/die in the course and scope of performing emergency service activities under the direction of a public body during a state of emergency declared under Oregon Revised Statutes Chapter 401, or during a state of public health emergency declared under ORS 433.441.

Injury must have occurred while the volunteer was:

- Performing emergency service activities at the direction of the public body; or
- Engaged in training authorized by the public body

Without an emergency declaration or authorization to conduct emergency services training by the Oregon Department of Emergency management or OHA, the public body or volunteer sponsor organization directing volunteers is responsible for informing volunteers of their waiver or assurance of workers' compensation coverage in the event a volunteer is injured/dies under the direction of that entity.

Emergency Health Care Provider Protections

Criteria for Protection

- Must meet the definition of a health care provider under ORS 401.651.
- Must be registered with the Oregon Health Authority as a SERV-OR volunteer (State Emergency Registry of Volunteers) under ORS 401.651 to 401.670 or are a health care provider performing health care services at a designated health care facility pursuant to ORS 401.657.
- Must be:
 - Deployed by OHA in response to a Governor's declared emergency or Governor's declared public health emergency or deployed as authorized under ORS 431A.015 or ORS 401.661.; or
 - Engaged in training *conducted or approved by OHA* for the purpose of preparing the volunteer to perform emergency services
- Acting within the course and scope of the volunteer's duties.

** Note that emergency health care providers registered with OHA are also considered QESVs.

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Who is Responsible for an Emergency Health Care Provider's indemnification (tort liability)?

ORS 401.667; SB 1529 Enrolled (ORS 431A.015)

OHA shall defend, save harmless and indemnify a volunteer emergency health care provider registered under ORS 401.654 for the purpose of acts and omissions of the volunteer that are within the course and scope of the volunteer's duties. Volunteers must meet the definition of a health care provider (ORS 401.651).

Protection applies whether or not the health care provider is compensated for the services

Who is Responsible for An Emergency Health Care Provider's Workers' Compensation Protection?

SB 1529 Enrolled (ORS 431A.015)

OHA shall provide workers' compensation coverage for volunteer emergency health care providers registered under ORS 401.654 who are injured in the course and scope of performing emergency health care services.

Injury must have occurred while the volunteer was:

- Performing health care services at the direction of OHA under ORS 401.661; or
- Engaged in training being conducted or approved by OHA for the purposes of preparing to provide emergency health care services.

Important Laws and Authorities Referenced

Chapter 30 — Actions and Suits in Particular Cases

- **ORS 30.285:** Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees

Chapter 656 — Workers' Compensation

- **ORS 656.039:** Election of coverage for workers not subject to law; procedure; cancellation; election of coverage for home care workers and personal support workers.

Chapter 401 – Emergency Management and Services

- **ORS 401.165:** Declaration of state of emergency; procedures.
- **ORS 401.368:** Workers' compensation benefits
- **ORS 401.364:** Coverage under Oregon Tort Claims Act
- **ORS 401.661:** Provision of health care services after declaration of emergency
- **ORS 401.667:** Coverage under Oregon Tort Claims Act

Chapter 433 — Disease and Condition Control; Mass Gatherings; Indoor Air

- **ORS 433.441:** Declaration of public health emergency

SB 1529 Enrolled – Emergency Health Care Providers

- Section 1 ORS 431A.015 (j); Section 2; Section 3