

DISCUSSION PAPER

1. TITLE

Coverage for Volunteer Members of Fire Brigades

2. ISSUE

At issue is whether WorkSafeBC (“WCB”) policy pertaining to coverage of volunteer firefighters should be updated to reflect current practice. Specifically, the following issues have been identified for policy clarification:

- coverage during participation in off-site training sessions which have a strong practice component; and
- coverage during travel in cases of emergency.

Also at issue is whether current policy should be updated to:

- recognize the expanded scope of a volunteer firefighter’s duties; and
- replace reference to “fire brigade” and “siren” with updated language.

3. BACKGROUND

3.1 Law and Policy

The *Workers Compensation Act* (“*Act*”) gives the WCB the authority to compensate workers for personal injury or death arising out of and in the course of employment.¹ Volunteer firefighters are recognized as “workers” under the *Act*.²

Current policy sets out that volunteer firefighters are entitled to compensation for injuries arising out of and in the course of activities of the fire brigade, which include the following:³

- fighting a fire;
- travelling to and from the fire hall or fire in response to a siren;
- participating in a drill or practice at the direction of the fire chief; and
- maintaining the fire hall and/or equipment as authorized by the fire chief.

¹ Section 5(1) of the *Act*.

² Definition of “worker” under section 1 of the *Act* includes a member of a fire brigade working in specific jurisdictions with or without remuneration; section 3(5)(a) stipulates that the Board may deem a person or group of persons involved in an undertaking of public interest as workers for the purpose of the *Act*.

³ Policy item #7.10, *Members of Fire Brigades, Rehabilitation Services & Claims Manual*, Volume II (“*RS&CM*”).

3.2 Administrative Practice

In 2000, the Firefighter Issues Committee, which comprised of representatives for WCB, fire chiefs and volunteer and professional firefighters, was formed to review issues pertaining to WCB coverage.⁴

In an effort to address the concerns raised by the Firefighter Issues Committee, the WCB prepared the WCB Update – *Firefighter Questions and Answers* in 2002, to clarify the level of WCB coverage extended to volunteer firefighters in three key areas:⁵

1. In addition to practices and drills taken at the direction of the fire chief, coverage is also extended to volunteer firefighters while they participate in authorized training sessions which contain a strong practice component, taken either at the fire hall or some off-site location.
2. Coverage during travel to an emergency commences when:
 - the volunteer starts travel to the emergency on a public road; or
 - the emergency call is received, if the volunteer's injury is primarily a result of the urgency with which he or she prepared to travel.
3. Coverage is extended for volunteer activities such as participation in public relations activities, which are undertaken during regular work hours, at the direction of the fire chief and for which, payment is received.

This WCB Update was circulated to WCB and appellate decision-makers, fire departments in British Columbia and posted on the website of the Office of the Fire Commissioner.

4. DISCUSSION

Volunteers generally get limited, if any, WCB coverage for injuries arising out of and in the course of their volunteer activities. Volunteer firefighters are considered workers under the *Act* and therefore, receive more extensive coverage due to the significant risk associated with their volunteer activities.

4.1 Coverage during Training Sessions and during Emergency-Related Travel

The WCB Update extended coverage to volunteer firefighters during participation in authorized off-site training sessions with a strong practice component, and

⁴ The joint committee consisted of representatives from the WCB Worker & Employer Services Division, the Volunteer Fire Fighters' Association of B.C., the Union of B.C. Municipalities, the Office of the Fire Commissioner, the Justice Institute of B.C. Fire and Safety Division, the Fire Chiefs' Association of B.C. and the B.C. Professional Fire Fighters' Association.

⁵ WCB Update No. WCB 001:02. A partial copy, including sections relevant to the issues presented in this paper, is provided in Appendix A.

during travel in cases of emergency. Accordingly, the Volunteer Firefighters' Association of BC has requested that this clarification be included in policy.

4.1.1 Training Sessions

Current policy sets out that coverage is provided to volunteer firefighters while they participate in active practices and drills undertaken at the direction of the fire chief. The policy interpretation regarding training was clarified in the WCB Update, which states that injuries sustained during any training session which includes a strong practice component, undertaken at the direction of the fire chief, either at the fire hall or off-site location, are considered to arise out of and in the course of employment.

Other Jurisdictions

Nine jurisdictions have a specific policy providing volunteer firefighters with compensation coverage while participating in all mandatory training activities.⁶ Only Ontario provides coverage for practices/drills undertaken specifically at the Ontario Fire College as well as for general training activities authorized by the fire department. Half the jurisdictions specify that authorization by the fire chief is required and none state that coverage is limited to training sessions involving a strong practice component.

4.1.2 Emergency-related Travel

WCB policy provides that, as a general principle, a worker does not have compensation coverage while routinely traveling from his/her home to his/her place of employment.⁷ The volunteer firefighter policy provides that, in cases of emergency, volunteer firefighters are in the course of employment while traveling to and from the fire hall/fire in response to a siren. However, the exact point at which this travel in the course of employment begins is not specified.

The WCB Update clarifies policy and confirms that coverage for volunteer firefighters commences during travel to an emergency when they begin traveling on public roadways. However, if an injury is sustained due to the urgency with which the volunteer firefighter is preparing to travel, WCB coverage begins when the notification of emergency is received. A review is currently underway of the travel policies as part of the Chapter 3 review and the approach for volunteer firefighters is consistent with the approach proposed for the general travel policies.

The policy clarification pertaining to travel in cases of emergency as set out in the WCB Update, is recognized as a practice guideline by WCB decision makers and appellate bodies. In 2002, it was used by an Appeal Division panel to allow

⁶ Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario and Prince Edward Island.

⁷ Policy item #18.00, *Traveling To and From Work, RS&CM*.

benefits to a volunteer firefighter who sustained injuries when he fell on his back porch while rushing out in response to a notification of a fire.⁸ The panel concluded that compensation coverage in this case commenced immediately upon notification, since the volunteer firefighter's injuries were primarily a result of his urgency to get to the fire.

Other Jurisdictions

With regards to coverage in cases of emergency, all Canadian jurisdictions with the exception of Alberta and Newfoundland and Labrador, commence compensation coverage of volunteer firefighters immediately following notification. In Alberta, coverage begins when worker leaves his or her front door. Newfoundland and Labrador adjudicates each case on its own merits.

4.2 Expanding Coverage to Include Emergency Response Duties and Public Relations Activities

The Volunteer Firefighters' Association of BC has requested that WCB coverage be expanded to recognize additional duties performed by volunteer firefighters that extend beyond fighting fires. These additional activities include emergency response duties and public relations work.

4.2.1 Emergency Response Duties

In addition to fighting fires, volunteer firefighters respond to various emergency situations including:

- facilitating evacuations;
- performing rescues;
- controlling hazardous substances;
- providing traffic control; and
- disaster planning/response.

This broader scope of firefighter duties is already recognized in the *Occupational Health and Safety Regulation* ("OHSR").⁹

In practice, the WCB provides coverage to volunteer firefighters who respond to emergency situations other than fire suppression.¹⁰ This is consistent with the majority of Canadian jurisdictions, which recognize emergency response activities as part of the employment of volunteer firefighters.¹¹ Only Saskatchewan restricts coverage to when the volunteer is specifically fighting a fire.

⁸ Appeal Division decision 2003-0249.

⁹ Section 31.5 of the *OHSR*.

¹⁰ Review Decision #25489.

¹¹ Manitoba, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Ontario, Prince Edward Island and the Yukon.

4.2.2 Public Relations Activities

Many volunteer firefighters participate in public relations events such as recruitment and safety education. The WCB Update clarifies that current policy extends compensation coverage to volunteer firefighters during participation in these events if participation is directed by the fire chief, it is a part of regular duties and it takes place during regular hours. This approach is consistent with proposed amendments to other WCB policies in Chapter 3 which pertain to all workers who engage in public relations activities.

Other Jurisdictions

Most jurisdictions either explicitly or by broad interpretation of law and policy consider authorized public relations activities as part of the employment of volunteer firefighters.¹²

Manitoba provides coverage for any mandatory activity while Ontario adjudicates claims for coverage of public relations work by considering factors that establish a sufficient employment connection at the time of the injury. These factors relate to: established practices of the employer; whether participation was mandatory or otherwise directed; whether participation was part of regular duties etc.

Nova Scotia and Prince Edward Island policies define public relations activities within a very narrow scope. Policies in these jurisdictions set out that volunteer firefighters have WCB coverage while participating in parades and other authorized activities, but not while engaged in fundraising, recreational or sports activities, even if they are authorized.

New Brunswick and Saskatchewan, on the other hand, do not consider volunteer firefighters to be in the course of their duties during any public relations work regardless of the employment connection.

4.3 Updating Current Policy: Terminology

The current policy uses language that is considered outdated. Specifically, policy speaks to compensation coverage being provided when a volunteer firefighter responds to a “siren”, although, notification of emergency commonly occurs via other means. Further, although the *Act* makes reference to “fire brigade”, the more common term is “fire department”, which is used in the *OHSR*.

All jurisdictions with the exception of Nova Scotia, Nunavut and Northwest Territories, use the term “fire brigade” with reference to volunteer firefighters in

¹² In Alberta, Northwest Territories, Nunavut, Newfoundland and Labrador, law and policy may be interpreted to favour coverage. Newfoundland specifically does not provide coverage during fundraising activities on behalf of the department. Coverage of volunteer firefighters in the Yukon is pursuant to the coverage purchased by each municipality.

the provincial compensation legislation.¹³ Most jurisdictions use the terms “fire brigade”, “fire department”, “volunteer firefighter” and “fire fighting services” interchangeably in policy, without impact on coverage. Furthermore, policies in other jurisdictions do not specify that notification of an emergency occurs via a siren.

5. OPTIONS AND IMPLICATIONS

Option 1: Status quo

Current policy would not be amended.

Implications

- Policy would not reflect accepted practice as set out in the WCB Update.
- Policy would not specify that coverage is extended to volunteer firefighters while engaged in duties of emergency response and public relations work.
- Policy would contain outdated terminology.
- Inconsistent decisions may arise from misunderstanding due to incongruity between current policy and practice.
- Policy would differ from most other Canadian jurisdictions which generally, provide a greater level of coverage to volunteer firefighters.
- The concerns raised by volunteer firefighters would not be addressed.

Option 2: Amend policy on a broad basis

Under this option, policy would be updated to:

- Clarify that coverage is provided during authorized off-site training sessions which include a strong practice component.
- Clarify that coverage during travel in cases of emergency commences when the volunteer firefighter commences travel on public roadways unless the injury is due to the urgency of preparation for travel.
- Expand coverage to include emergency response duties, and public relations work when there is a sufficient employment connection.
- Reflect commonly used terminology in reference to volunteer firefighters.

Implications

- Coverage during emergency-related travel would be comparable with most other jurisdictions.
- Providing coverage during emergency response duties would be comparable with all jurisdictions except Saskatchewan.
- Providing coverage for public relations activity with sufficient employment connection would be consistent with Ontario.

¹³ While most jurisdictions use “fire brigade”, the Nova Scotia *Act* uses the term “fire department” and Nunavut and NWT use the term “fire fighting services”.

- Updating policy to reflect current terminology with reference to volunteer firefighters would be consistent with practice in other jurisdictions.
- Policy would be consistent with respect to WCB administrative practice.
- Policy would be consistent with proposed amendments to other WCB policies which are currently being considered as part of the Chapter 3 review.
- Updating policy would address the concerns raised by the Volunteer Firefighters' Association of BC.

A copy of the proposed policy is attached in Appendix B

Option 3: Amend policy on a limited basis

Policy would be amended as set out in Option 2 with the exception of providing coverage for *any* public relations activities.

Implications

- Policy would be inconsistent with most other jurisdictions which provide coverage for public relations activities, even on a narrow basis.
- This would not fully address the concerns raised by the Volunteer Firefighters' Association of BC.

6. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **June 08, 2007**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Deepani Weerapura
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By e-mail: policy@worksafebc.com

WorkSafeBC's governing body, the Board of Directors, will consider the options expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have

participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A

WCB Update

WCB Update, No. WCB 001: 02: *Fire Fighter Questions and Answers*, posted on the website of the Office of the Fire Commissioner

When am I covered by the WCB?

Volunteer fire fighters are covered for injuries or diseases that “arise out of and in the course of” the activities related to the process of firefighting. Coverage is extended to include activities within the environs of the fire hall that are authorized by and under the direction and control of the Fire Chief, such as maintenance to the building or equipment, snow clearance, etc. Volunteer fire fighters are also covered during participation in drill or practice sessions, but not during travel to and from practices.

Professional firefighters are covered by the WCB for those work-related injuries that arise out of and in the course of employment.

Am I covered when on call at home and respond to an emergency?

Volunteer fire fighters are covered, during an actual emergency where the member is travelling to the fire hall or directly to the fire in response to an emergency call. Volunteers are also covered when returning home or to the member’s regular job after the fire.

Professional firefighters on call are covered if, because of an emergency they have to make a special journey from home to the employer’s premises or some other location as directed.

In cases of an emergency, an on call worker would generally be covered from the point in time in which he/she commences travel to the emergency on public roads. Injuries sustained after the emergency call is received, but prior to the commencement of travel may be covered if the injury results primarily from activity associated with the urgency of the preparation for travel.

What happens if I am involved in a motor vehicle accident while responding to or returning from an emergency in my private vehicle?

When an on call professional or volunteer firefighter is responding to an emergency in his/her own vehicle, this individual is considered to be a worker under the *Workers Compensation Act* (the “Act”). In such cases, where a firefighter is involved in a motor vehicle accident, he/she would be covered by the WCB. It must also be determined whether the other driver was working at the time of the accident. Where the other driver was not working, the fire fighter has the option of claiming WCB benefits or bringing a legal action against the other driver. Please contact **both** ICBC and WCB in the event of an accident.

Am I covered by WCB for practices, training, and conferences?

Professional and volunteer fire fighters are covered when they participate in educational or training courses or conferences that take place during regular work hours and for which wages are paid.

The WCB has clarified that volunteer fire fighters are covered when attending practice sessions either at the fire hall or at an offsite location where the individual is directed to attend the practice session by the Fire Chief. Practice sessions include training with a strong practice component (i.e. live fire training sessions).

Compensation coverage does not extend to injuries occurring in the course of first aid courses being taken off the employer's premises and outside work hours. This is so, even though the worker may receive additional pay for a first aid ticket and is reimbursed the course fee by the employer.

Do I have WCB coverage when performing volunteer (non-paid) work such as recruitment, charity drives, and school fire safety education?

A worker is generally covered while participating in activities that are part of the worker's employment contract; that occur during regular work hours; that the worker is directed to participate in by the employer; and that the worker receives payment for participation.

Volunteer activities that occur outside of regular work hours, for which there is no payment and which there is no direction, are generally not covered.

APPENDIX B

Proposed Policy Item #7.10 *Members of Fire Brigades, Rehabilitation Services & Claims Manual, Volume*

#7.10 ~~Members of Fire Brigades~~ Coverage of Volunteer Firefighters

Volunteer firefighters are included under the definition of “worker” in section 1 of the Act.

By policy, a volunteer firefighter includes an individual at the scene of a fire, who is requested by the Fire Chief or authorized delegate to assist, and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized delegate are covered.

~~A volunteer member of a fire brigade firefighter is entitled to compensation for injuries or death arising out of and in the course of the activities of the fire brigade department. This involves activities related to the process of firefighting even though not actually occurring while fighting a fire or during a drill or practice. It includes activities within the environs of the fire hall which are authorized and under the direction and control of the Fire Chief, such as activities involving maintenance to the building or equipment, snow clearance, etc. [moved to maintenance duties]. Coverage applies in the case of participation in practices, but not to travel to and from practices. [moved to participation in practices and drills] However, there would be coverage in an actual emergency where the member is travelling to the firehall or the fire in response to the siren or returning home or to the member's regular job after the fire. [moved to travel section]~~

A. Travel

~~However, there would be coverage in an actual emergency where the member is travelling to the firehall or the fire in response to the siren or returning home or to the member's regular job after the fire.~~

Volunteer firefighters are not covered for injuries or death which occurs while routinely commuting to and from the fire hall.

Volunteer firefighters may be considered in the course of their employment while:

- **traveling to the fire hall, fire or site of emergency in response to notification of an actual emergency; and**
- **while returning to the volunteer’s home or regular job after attending to the emergency duties, via the most direct route without departure for personal reasons.**

Where a volunteer firefighter is required to travel from his or her home to an emergency, the volunteer firefighter is generally considered to be in the course of employment from the time he or she commences travel on the public roadways.

In cases of emergency, if an injury or death results primarily from an activity associated with the urgency of the preparation for travel, it may be considered to arise out of and in the course of the employment.

B. Participation in Practices and Drills

~~Coverage applies in the case of participation in practices, but not to travel to and from practices.~~

An injury or death may be considered to arise out of and in the course of employment if it occurs during participation in drills or practices at the direction of the fire chief and undertaken either at the fire hall or some off-site location. Practices include training sessions with a strong practice component such as live firefighter training.

C. Other Employment Activities

i) Maintenance Duties

~~It includes activities within the environs of the fire hall which are authorized and under the direction and control of the Fire Chief, such as activities involving maintenance to the building or equipment, snow clearance, etc.~~

An injury or death may be considered to arise out of and in the course of employment if it results from maintenance of the building/equipment within the environs of the fire hall, where the volunteer firefighter is authorized and under the direct supervision and control of the fire chief.

ii) Public Relations Work

An injury or death may be considered to arise out of and in the course of employment if it results from public relations duties such as participation in recruitment and safety education, which are sufficiently connected to the volunteer firefighter's employment

The following provides guidance on how to determine if the volunteer firefighter's participation in public relations activities at the time of injury or death was sufficiently connected to his or her employment:

- Was the volunteer firefighter directed by the fire chief to carry out the public relations activity as part of their employment? The clearer the direction, the more this factor favours coverage.**

If the volunteer firefighter was doing something on a purely voluntary basis, without the fire chief directing participation, this factor would not favour coverage.

- **Was participation in the public relations activity during the volunteer firefighter's shift? If so, this factor favours coverage.**
- **Was the public relations activity part of the volunteer firefighter's authorized duties? If so, this factor favours coverage.**

The more tenuous the employment connection, the less these factors favour coverage.