

Information Paper

Subject: Mobile Support Units

1. Facts:

A. Background: Indiana's emergency management laws can be traced back to civil defense laws which were primarily concerned with carrying out emergency functions following an enemy attack or secondarily in response to "fire, flood, earthquake or other natural causes." For example, the Civil Defense Act of 1949 created "Mobile Reserve Battalions" which the Governor could dispatch to supplement local civil defense organizations in a stricken area. The Civil Defense Act of 1949 authorized the Governor to declare a state of emergency in the event of an enemy attack on the continental United States. The 1951 Civil Defense Act replaced Mobile Reserve Battalions with Mobile Support Units. Over the years, the focus of Indiana's Emergency Management laws has been redirected from responding to enemy attack to responding to disasters and other domestic emergencies. In 1991, the words "Civil Defense" were replaced with the words "Emergency Management."

B. Functions: The functions of a Mobile Support Unit are not very different today than they were in 1949. A mobile support unit (MSU) is a temporary response organization that now may be established either by the Governor or the IDHS Executive Director under IC 10-14-3-19 to respond to a disaster, public health emergency, public safety emergency or other event that requires emergency action.

C. Commander: MSUs may be organized at the county or district level, but only upon a written activation order. Each Mobile Support Unit has a commander appointed by the Executive Director of IDHS. The Mobile Support Unit Commander has the primary responsibility for the organization, administration, and operation of the unit.

D. Duration: Although the statute allows a MSU to be activated for up to 60 days, IDHS generally plans to limit the period of any individual's term of duty to fourteen (14) calendar days. When the mission requires a longer state presence, IDHS plans to rotate one MSU out and rotate another in to replace it.

E. Public Employees: If the MSU member is employed by the state or a political subdivision of the state, IC 10-14-3-19 (c) provides the individual has the same powers, duties, rights, privileges and immunities and shall receive the compensation and benefits incidental to the individual's employment, whether serving within or outside the political subdivision. If the MSU member is not employed by the state or a political subdivision of the state, IC 10-14-3-19 (c) (2) provides that the individual is still "entitled to the same rights and immunities that are provided for an employee of the state."

F. Private Employees: MSU members employed by private employers or who are either unemployed or self employed are treated as state employees only for purposes of some workers' compensation benefits and protection from personal liability. These individuals are not eligible for the health insurance, dental insurance, life insurance, death benefits or other employer provided fringe benefits that are available to state employees.

G. Duty Status: Both employees of private organizations and governmental employees should serve as MSU members in a "present for duty status" with their employers, earning pay, overtime, and are paid directly by their employers. In that status, they also remain eligible for all employer provided protections and benefits. These employees should not be on a leave status with the employer, but should be in a regular working status. Otherwise, the employer is not entitled to reimbursement from IDHS for his or her wages. Being in a leave

status will also impair the employee's rights to employer provided workers compensation or death benefits, in the event of the individual's injury or death.

H. Reimbursement Procedures: In order to be reimbursed for the allowable expenses of their employee(s), employers must provide a copy of several documents including:

1. The Employer's Payroll and Overtime Policy.
2. The Employer's payroll register/payroll stubs.
3. The actual receipts for any lodging, travel or maintenance costs that they paid for their employees.
4. A Vendor's Information Form. This form is required by the Indiana Auditor of State in order for the state to reimburse the employer.
5. A Travel Voucher from each MSU member. An unemployed MSU member or a self-employed member may submit the form directly to IDHS for reimbursement. An employed MSU member will submit this form to his or her employer upon the end of the MSU deployment. The employer will reimburse the employee for his or her travel costs. The employer will then provide both this form and proof of payment to the employee to IDHS as documentation in support of the employer's claim for reimbursement by IDHS.

I. Employment Protection: Under IC 10-14-3-19 (a), members serving on the mobile support units are immune from discipline or termination by the members' employers for serving in the units. This means that a disciplinary action that was based on the employee's absence for MSU duty is unlawful.

J. Worker's Compensation: IC 10-14-3-19 contemplates the state reimbursing "all payments for death, disability, or injury of an employee incurred in the course of duty while the employee was serving as a member of a mobile support unit." Other than volunteer firefighters, MSU members who are employed need to remain in an employment status with their employers in order to assert a claim for workers' compensation for any accident or injury taking place during a deployment as a MSU member. MSU members need to be in a working status, rather than in a leave or vacation status, with the consent of their employers in order for the injury to arise "out of and in the course of employment."

K. Tort Liability: IC 10-14-3-15 creates a broad grant of immunity for the state and its political subdivisions when "complying with or reasonably attempting to comply with IC 10-14-3, Indiana's "Emergency Management and Disaster Law." IC 10-14-3-15 also grants limited immunity to any emergency management worker "complying with or reasonably attempting to comply with IC 10-14-3 or any order or rule adopted under this chapter or under any ordinance related to blackout or other precautionary measures enacted by any political subdivision of the state." Such an emergency management worker is not liable for the death of or injury to persons or for damage to property as a result of any such activity, except in cases of willful misconduct, gross negligence or bad faith. An individual MSU member is considered an "emergency management worker" for the purposes of the grant of limited immunity provided to such persons in IC 10-14-3-15. Under the legal doctrine of *respondeat superior*, the employer of an emergency management worker's liability is derived from the liability of the employee. If the employee is not liable due to the application of the legislative grant of limited immunity, the employer is not liable either.

2. Questions: Questions about Mobile Support Units should be directed to George Thompson, IDHS General Counsel.

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