

***N.C. Occupational Safety and Health
Frequently Asked Questions***

OSHNC and Volunteer Service Organizations

In a volunteer service organization such as EMS or volunteer fire department, who is protected by OSHNC Standards?

It depends. OSHNC has coverage only where an employee/employer relationship exists. If this relationship does not exist, OSHNC cannot enforce its standards.

An employee/employer relationship may exist for one or all of the individuals in an organization. For instance, if an organization has one employee and several volunteers, the organization must comply with OSHNC standards applicable to the employee's work. From the perspective of the Occupational Safety and Health Act, the organization is not obligated to comply with OSHNC standards with respect to the work performed by the volunteers.

Even in voluntary situations, the ultimate objective is safety. Therefore, OSHNC and professional associations encourage compliance with the most appropriate standards and safety practices. Also, some insurance companies etc. may require compliance with OSHNC or consensus standards (such as NFPA or ANSI) as a contractual condition. This is outside of OSHNC's control and scope.

If an employee/employer relationship exists, which OSHNC standards apply?

Any standard applies if the work performed by the **employee** fits within the scope and application of the standard.

What factors are used by OSHNC in determining whether an employee/employer relationship exists?

On a case-by-case basis, OSHNC uses elements of control factors to determine whether an employee/employer relationship exists. Each factor, in and of itself, may not invoke OSHNC coverage. OSHNC uses the factors in concert to determine whether the elements of control necessary to establish an employee/employer relationship exist.

OSHNC Frequently Asked Questions

OSHNC and Volunteer Service Organizations continued

Elements of Control - This is an exemplary discussion. It is not exhaustive. Seek legal advice as necessary.

- A. The primary element of control factor is the payment of wages and commissions including sick pay, vacation pay, severance pay, bonuses and other amounts promised. If contractual payments are made, other elements of control over the individual's activities may be necessary to establish whether there is an employee/employer relationship.

- B. Other lesser forms for monetary control include: reimbursing the individual for expenses, and/or providing retirement or medical benefits. In most cases worker's compensation and disability insurance will not be deemed direct compensation, since the individual does not benefit from these unless injured. Additionally, if the volunteer service organization provides death benefits to surviving family members, OSHNC typically does not consider this as compensation for the purposes of determining whether an employee/employer relationship exists.

- C. A county or municipal government may be considered an employer of the volunteer service organization and its members if monetary compensation as noted above is provided by the county or municipality. If the county or municipality provides operational money from fire taxes or a tax base, OSHNC does not consider this as direct compensation when determining whether an employee/employer relationship exists. However, if the county or municipality exhibits strong control over the volunteer service organization, an employee/employer relationship may be deemed to exist. Indicators of control over the service organization include:
 - 1. The municipality or county owns the equipment, tools or vehicles used by the service organization.
 - 2. The municipality or county owns the land and building used by the service organization.
 - 3. The municipality or county approves either personnel or qualification rules for joining the service organization (such as minimum qualifications or training mandates).
 - 4. The municipality or county provides direct supervision or direction of the work environment of the service organization (including directing activities of firefighters battling fires, requiring the organization to submit activity reports, or approving the organization's operational plan by, among other things, establishing work hours).