Memorandum Immunity Protection

Each layer of State and Local governments has the option of hiring deploying or contracting for additional emergency personnel to help in event of a declaration under the Stafford Act for emergency work”.


   (4)(A) Such persons shall only be called to active duty upon declaration of a disaster emergency as stipulated in § 12-75-101 et seq. or the Disaster Relief Act of 1973, Pub. L. No. 93-288, or both, or by executive order of the Governor upon recommendation by the director for due cause or pending emergency needs and shall remain on active duty no longer than sixty (60) days after a declaration or declarations unless such declaration or declarations are extended by the Governor or the President of the United States, in which case they shall be continued for no more than sixty (60) days after the final declaration issued for that disaster emergency event.

   (B) Based on the size, impact, and magnitude of the disaster event, the director shall determine the minimum number of reserve personnel required to effectively supplement regular state emergency management personnel and report these numbers to the Governor for approval.

   (5) While in such service, the individuals so employed shall have the same immunities as regular state employees for good faith performance of their designated and assigned official duties under state sovereignty laws and practices.

A. Regular State employees are entitled to immunity under Art. 5 Section 20 of the Arkansas Constitution and Ark. Code Ann. §19-10-305(a) Officers and employees of the State of Arkansas are immune from liability and from suit, except to the extent that they may be covered by liability insurance, for damages for acts or omissions, other than malicious acts or omissions, occurring within the course and scope of their employment.

2. Robert T. Stafford Relief and Emergency Assistance Act, as amended 42 USC §5121-5206 implementing regulations found at 44 CFR Part 206. Under the Stafford Act both an Emergency and Major Disaster was declared by the Secretary of HHS and the President as a result of the aftermath of the Hurricanes.

The Secretary of Health and Human Services (HHS) has the authority to declare a public health emergency under section 319 of the Public Health Act (42 USCA 247d). On August 31, 2005, Secretary Leavitt declared a public health emergency pursuant to this section in response to the aftermath of Hurricane Katrina. This declaration vests the Secretary with certain spending powers to issue grants and provide response assistance. Relevant statutory language is as follows:
“If the Secretary determines, after consultation with such public health officials as may be necessary, that-
(1) a disease or disorder presents a public health emergency; or
(2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists,
the Secretary may take such action as may be appropriate to respond to the public health emergency…

Liability Protections
Intermittent disaster-response personnel benefit from the same immunity from civil liability granted to employees of the U.S. Public Health Service. This effectively means that the only remedy for damages for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by any commissioned officer or employee of the Public Health Service (acting within the scope of office or employment) is against the United States, and not against the officer or employee (or her estate) whose act or omission gave rise to the claim. The U.S. Attorney General is also required to defend these individuals. 42 USC 233(a).

**4. Volunteer Protection Act of 1977:**
§14502 preempt state law to the extent that state law does not provide additional protection.
- No liability for “volunteer” of any non-governmental organization if:
  - Work performed within volunteer’s scope of duties
  - Volunteer properly licensed
  - Volunteer had no criminal or willful misconduct

**Ark. Code Ann. §16-6-105 (with some exceptions)**
A qualified volunteer shall not be liable in damages for personal injury or property damage sustained by one who is a participant in, or a recipient, consumer, or user of, the services or benefits of a volunteer by reason of any act or omission of a qualified volunteer in connection with the volunteer.

**Good Samaritan Laws in Arkansas provide:**
Ark Code Ann. 17-95-101(a) Any person licensed as a physician or surgeon under the laws of the State of Arkansas or any other person, who, in good faith, lends emergency care or assistance without compensation at the place of an emergency or accident, and who was acting as a reasonable and prudent person would have acted under the circumstances present at the scene at the time the services were rendered, shall not be liable for any civil damages for acts or omissions performed in good faith.

**Emergency Management Assistance Compact “EMAC”**
Triggered by State declaration of an Emergency:
- 48 states have joined compact including Arkansas
  - Requesting state is required to pay any workers comp for injuries and also the volunteers are protected by immunity under the compact.