



Date: June 25, 2015  
To: Members of the State Coastal Conservancy  
From: Sam Schuchat, Executive Officer  
C: Oversight Legislators  
RE: Extending Workers' Compensation Program Benefits to Coastal Conservancy Volunteers

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The California Department of Human Resources (CalHR) has requested all State departments make a formal determination and adopt resolutions regarding the extension of workers' compensation benefits to agency volunteers. Workers' compensation coverage is not mandatory for volunteers as it is for employees; it is at the option of the agency. However, in light of the benefits provided to employers under the workers' compensation law by providing an administrative remedy for work-related injuries and the benefit the Conservancy receives from volunteer services, I recommend that the Conservancy adopt the following resolution:

"The Coastal Conservancy hereby approves the extension of the worker's compensation program benefits to State Coastal Conservancy volunteers and authorizes the Executive Officer to take actions necessary to implement this authorization."

### **Background**

Workers' compensation programs were developed in the early 20<sup>th</sup> century to address both labor and employer concerns over high rates of work-related injuries, insufficient and unequal compensation to injured workers, and continuing uncertainty about the costs related to these injuries. Workers' compensation benefits provide reimbursement for injuries that occur while on the job and include coverage for medical costs associated with the injury, death benefits for those killed on the job, temporary disability benefits for lost wages, permanent disability compensation, and supplemental job displacement benefits to provide retraining for those who cannot return to work. (Labor Code § 139.32(a)(3)). In exchange for the benefits offered through the workers' compensation program, employers

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receive reduced exposure to personal injury claims by those who are injured while performing services for the employer, as well as a settled administrative procedure for processing claims and returning employees to work. California's workers' compensation system requires that all state agencies provide workers' compensation benefits to their employees.<sup>1</sup>

Individuals who perform voluntary service for a public agency and receive “no remuneration for [their] services other than meals, transportation, or reimbursement for incidental expenses” are excluded from the definition of employees. As such are not covered by workers' compensation insurance. (Labor Code § 3352(i)). However, public agencies, through adoption of a resolution by their governing bodies, may declare volunteers to be employees for purposes of workers' compensation coverage. (Labor Code § 3363.5.) Once workers' compensation benefits are extended to volunteers, this becomes their exclusive remedy for work-place injuries. (Labor Code §3600 et seq.). Because volunteers are unpaid, they are typically not paid lost wage claims,<sup>2</sup> but can recover for medical and other costs associated with an on-the-job accident.

The Conservancy participates in a master agreement between CalHR and the State Compensation Insurance Fund to provide administration of the state workers' compensation coverage. The agreement allows for the extension of coverage to volunteers if the agency chooses to do. However, like most state agencies, the Conservancy is responsible for all claims filed by covered workers. Each agency is responsible for managing its own risks with respect to work-place safety.

Adding volunteers to an agency's workers' compensation schedule is usually beneficial to the agency. Approximately 80% of state agencies extend workers' compensation benefits to their volunteers, because it represents an expedient and cost effective way to compensate injured employees and provides a basis for medical coverage to volunteers who might not otherwise have such coverage.<sup>3</sup> An alternative would be to require volunteers to have

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<sup>1</sup> Workers Compensation in California began in 1911 and was substantially expanded in 1913. Compensation Act of 1911 (the Roseberry Act), Cal. 399 (1911) and Workers' Compensation, Insurance and Safety Act of 1913 (the Boynton Act). The State of California is the only employer that is not required to provide workers' compensation insurance, though it does provide the equivalent coverage through an agreement with the State Compensation Fund.

<sup>2</sup> Because volunteers have no wage, they would not have wage loss if they are unable to work while they recover from their injury. This assumes, however, that the volunteer has no wages elsewhere, because temporary disability benefits are based on the employee's average weekly wage from all sources.

<sup>3</sup> Workers' compensation reforms on the area of temporary and permanent disability payments have significantly reduced claims since passage of statutory reforms enacted in 2005. See Charles Young, PUBLIC SELF-INSURED CLAIMS EXPERIENCE IN CALIFORNIA WORKERS' COMPENSATION, FISCAL YEAR 1998/1999 THROUGH FISCAL YEAR 2011/2012 (March 2013). CalHR has informed us that they do not track claims experience by agency volunteers, so there is no claims rate among volunteers to compare with regular employees. (Personal communication with Tracy Caldwell, Workers' Compensation Specialist, CalHR, April 7 2015).

independent medical coverage and/or to expect volunteers to sue the agency if they are injured while performing services for the Conservancy. This alternative would put an added burden on individuals who wish to volunteer at the Conservancy, require monitoring of volunteer medical coverage and increased supervision by Conservancy staff.

### **Conclusion**

I recommend that the Conservancy adopt the proposed resolution allowing the extension of workers' compensation coverage to agency volunteers to provide an established mechanism for evaluating and compensating individuals who are injured while performing volunteer services for the Conservancy. If the Conservancy approves, staff will forward the board's resolution to CalHR and will inform each Conservancy volunteer of workers' compensation coverage at the start of their volunteer experience.