

## Workers' Compensation: Volunteer

### ALM GL ch. 152 1(4)-(5)

A volunteer who is injured or killed while performing their duties are entitled to Massachusetts workers' compensation.

---

#### Definitions

(4) "Employee", every person in the service of another under any contract of hire, express or implied, oral or written, excepting (a) masters of and seamen on vessels engaged in interstate or foreign commerce, (b) persons employed to participate in organized professional athletics, while so employed, if their contracts of hire provide for the payment of wages during the period of any disability resulting from such employment, (c) a salesperson affiliated with a real estate broker pursuant to an agreement which specifically provides for compensation only in the form of commissions earned from the sale or rental of real property, (d) a salesperson who is a direct seller of consumer products on a buy-sell or deposit-commission basis other than in a retail establishment, all of whose remuneration is directly related to sales rather than amount of time worked and whose services are performed pursuant to a written contract providing that the direct seller will not be treated as an employee for Federal tax purposes, (e) a person who operates a taxicab vehicle which is leased by such person from a taxicab company pursuant to an independent contract which specifically provides for a rental fee or other payment to the owner of such taxicab vehicle which is in no way related to the taxicab fares collected by such person; and provided, further, that such person is not treated as an employee for Federal tax purposes, (f) persons employed by an employer engaged in interstate or foreign commerce but only so far as the laws of the United States provide for compensation or liability for their injury or death, and (g) a person whose employment is not in the usual course of the trade, business, profession or occupation of his employer, but not excepting a person conclusively presumed to be an employee under section twenty-six.

Notwithstanding the provisions of section one hundred of chapter forty-one, any reserve or special police officer who

is employed by a contractor for the purpose of directing or maintaining traffic or other similar purposes upon any way which is being constructed or reconstructed or upon which other types of construction projects are in progress under contract with the state department of highways or the metropolitan district commission or any city or town, and who is paid directly for such services by a contractor engaged in the performance of such a contract with said department or commission or city or town, shall be conclusively presumed to be an employee of such contractor while so employed and paid; and, notwithstanding any contrary provision of law, the compensation provided by this chapter shall be paid to any such police officer who receives an injury arising out of and in the course of such employment, or, in case of death resulting from such injury, to the persons entitled thereto.

Students participating in a work-based experience as part of a school-to-work program who receive personal injuries arising out of and in the course of such participation at or with particular employers, shall, for purposes of this chapter, be deemed employees of such employers. For the purposes of this paragraph, "school to work program" shall mean workplace based education and training programs designed to improve the knowledge and skills of high school students by integrating academic and occupational learning to prepare students for gainful employment and increase their opportunities for post secondary education.

The provisions of this chapter shall remain elective as to employers of seasonal or casual or part-time domestic servants. For the purpose of this paragraph, a part-time domestic servant is one who works in the employ of the employer less than sixteen hours per week.

This chapter shall be elective for an officer or director of a corporation who owns at least 25 per cent of the issued and outstanding stock of the corporation. Notwithstanding section 46, these provisions shall apply only if the corporate officer provides the commissioner of industrial accidents with a written waiver of his rights under this chapter. Said commissioner shall promulgate regulations to carry out the purpose of this paragraph. Violations of this paragraph shall subject the corporation to the penalties set forth in section 25C.

For the purpose of this chapter, a sole proprietor at his option or a partnership at its option shall be an employee. A sole proprietor or partnership may elect coverage by securing insurance with a carrier.

Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(5) "Employer", an individual, partnership, association, corporation or other legal entity, or any two or more of the foregoing engaged in a joint enterprise, and including the legal representatives of a deceased employer, or the receiver or trustee of an individual, partnership, association, corporation or other legal entity, employing employees subject to this chapter; provided, however, that the owner of a dwelling house having not more than three apartments and who resides therein, or the occupant of a dwelling house of another who employs persons to do maintenance, construction or repair work on such dwelling house or on the grounds or buildings appurtenant thereto shall not because of such employment be deemed to be an employer. The word "employer" shall include both the general employer and the special employer in any case where both relationships exist with respect to an employee. The word "employer" shall not include nonprofit entities, as defined by the Internal Revenue Code, that are exclusively staffed by volunteers.

A corporation and its subsidiary corporations shall be considered as one entity for the purposes of a self-insurance license; provided, however, that such corporation has signed as guarantor to insure payment of claims by its subsidiary corporations.