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BEST PRACTICE

Mutual Aid Agreements: Liability and Insurance

PURPOSE

This Best Practice provides guidance on addressing liability and insurance issues in mutual aid agreements.

SUMMARY

Mutual aid agreements should spell out the liability of all parties and provide guidance for arbitration or resolution of any claims. In most cases, agreements should indemnify mutual aid partners from any liability from alleged negligence occurring during a mutual aid response. Legal counsel should play a lead role in drafting and reviewing all agreement language related to these issues. Insurance should be required of all parties, and insurers must be made aware of mutual aid requirements.

DESCRIPTION

Liability

A lending party will naturally be concerned with the potential for mistakes and subsequent liability on its part. Mutual aid agreements should address this issue so that both parties fully understand their accountability in such situations. Without clear guidance on liability issues, a response agency might be hesitant to lend aid because of legal risk.

In general, mutual aid partners should indemnify one another from liability during emergency response. While indemnity does not protect response agencies from all potential legal disputes, it is the most effective way to address liability issues. Indemnity will accomplish two things:

1. Waive claims amongst parties to the agreement. This is usually called "waivers" or "general waivers," although the name will vary. [Illinois's Mutual Aid Box Alarm System \(MABAS\)](#) indemnifies parties:

Each party hereto agrees to waive all claims against all other parties hereto for any loss, damage, personal injury or death occurring in consequence of the performance of this Mutual Aid Agreement; provided, however, that such claim is not a result of gross negligence or willful misconduct by a party hereto or its personnel. Each party requesting or providing aid pursuant to this Agreement hereby expressly agrees to hold harmless, indemnify and defend the party rendering aid and its personnel from any and all claims, demands, liability, losses, suits in law or in equity which are made by a third party.

An example from [Oregon's Model Mutual Aid Agreement](#):

GENERAL WAIVERS. Each party to this Agreement waives all claims against all other parties to this Agreement for compensation for any loss, damage, personal injury, or death occurring to personnel and/or equipment as a consequence of the performance of this agreement.

An example from the [Alamo Area Council of Governments Mutual Aid Agreement](#):

Each Party hereto waives all claims against the other Parties hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. No Party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of the foregoing sentence or its execution of this Agreement and the performance of the covenants contained herein.

2. Waive claims against assisting parties from third parties. This is usually called a "hold harmless" or "government immunity clause." Units responding in a foreign jurisdiction should be considered government entities when they respond under a formal mutual aid agreement.

An example from [Ohio's Intrastate Mutual Aid Compact](#):

Personnel of a responding participating political subdivision shall be considered, while rendering assistance in another participating political subdivision under this section, to be agents of the participating political subdivision receiving the assistance for purposes of tort liability and immunity from tort liability under the law of this state.

Another example from [Oregon's Model Mutual Aid Agreement](#):

HOLD HARMLESS. Any party responding to a request for assistance under this agreement shall save and hold harmless the requesting party from, and indemnify the requesting party against, any and all third party liability for or on account of any death or injury to a person, or damage to property arising out of any action by the personnel of the responding part taken pursuant to the provisions of this agreement.

An example from the [National Emergency Managements Agency's \(NEMA\)](#) forthcoming Model Intrastate Mutual Aid Agreement:

IMMUNITY. All activities performed under this agreement are deemed hereby to be governmental functions. Neither the participating political subdivisions nor their employees, except in cases of willful misconduct, gross negligence, or bad faith shall be liable for the death of or injury to persons, or for damage to property when complying or attempting to comply with this mutual aid agreement.¹

¹ Courtesy of the National Emergency Management Association.

According to the [League of Minnesota Cities Insurance Trust](#), indemnification makes it possible for all parties to use a single defense attorney for all tort liability claims arising from an incident. Defense of potential liability claims is more complicated and expensive if each city or response agency handles liability separately. Each participating jurisdiction might be sued, which could lead to efforts at blaming other parties and subsequent legal conflicts. It should be noted that this may not be universally applicable; seek legal counsel for all issues related to liability and tort claims.

Insurance

In developing local mutual aid and emergency preparedness plans, provisions must be made for liability and property damage insurance coverage on apparatus and equipment used beyond the territorial limits of the political subdivision. Insurance companies must be made aware of mutual aid agreements to ensure that aid is portable. Coverage should be valid only for units responding lawfully under a written mutual aid agreement.

Any potential mutual aid partners should have insurance to cover claims against it for negligence and other circumstances that might arise from emergency response. The waivers or immunity clause should include language that requires workers compensation insurance and other insurances to cover general response activities. Examples:

[MABAS](#) requires insurance for participating fire departments:

Each party hereto shall procure and maintain, at its sole and exclusive expense, insurance coverage, including: comprehensive liability, personal injury, property damage, worker's compensation, and, if applicable, emergency medical service professional liability

Sample language from [Oregon's Model Mutual Aid Agreement](#):

Each party to this agreement agrees to provide workers compensation insurance coverage to each of its employees. Supervision of individual employees remains with regular supervisors.

Each party here to agrees to obtain liability insurance, or equivalent coverage, covering its activities assumed under this agreement.

Legal counsel must determine the exact language drafted into an agreement, with proper attention paid to local and state laws and regulations. Legal counsel should review all mutual aid agreements prior to enactment.

The [League of Minnesota Cities Insurance Trust](#) model mutual aid agreement lists suggested ways to deal with liability, worker's compensation, and equipment damage in mutual aid incidents.

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