

**To: Michael P. Austin**

**Director, Emergency Management Division Department of Emergency  
and Military Affairs**

**February 2, 2000**

**Re: I00-003  
(R99-061)**

### **Question Presented**

You have asked if time spent by volunteer State employees in training missions for search or rescue operations can be used to calculate workers' compensation benefits under the current version of Arizona Revised Statutes ("A.R.S.") § 32-901, despite a contrary conclusion in Arizona Att'y Gen. Op. I85-027 concerning an earlier version of this statute.

### **Summary Answer**

Under A.R.S. § 23-901, time spent by volunteer State employees in training missions for search or rescue operations is eligible for inclusion in calculating workers' compensation benefits, and Ariz. Att'y Gen. Op. I85-027 is no longer correct to the extent it concludes otherwise.

### **Background**

In 1985, the Arizona Attorney General issued an opinion concluding that time spent in training missions for search and rescue operations cannot be used to calculate workers' compensation benefits. Ariz. Att'y Gen. Op. I85-027. At the time, A.R.S. § 23-901, the statute defining who is eligible for workers' compensation benefits, did not include time spent by volunteer State employees in training exercises for search or rescue operations. *Id.* However, shortly after that opinion was issued, the Legislature amended A.R.S. § 23-901 to include search or rescue training operations. 1985 Ariz. Sess. Laws ch. 349, § 1. As a result of that change, the definition of "employee," "workman," "worker," and "operative" for the purposes of Arizona's workers' compensation laws now includes:

Personnel who participate in a *search or rescue operation or a search or rescue training operation* that carries a mission identifier assigned by the division of emergency management as provided in § 35-192.01 and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management in a given quarter multiplied by the amount determined by the appropriate risk management formula.

A.R.S. § 23-901(5)(M) (emphasis added).

The legislative history of the 1985 amendments to A.R.S. § 23-901 indicates that those changes were intended to supercede Ariz. Att'y Gen. Op. I85-027:

Attorney General's opinions issued in 1979 and 1985 stated that volunteers who participated in training and drills were not covered by workers' compensation. As a result, House Bill 2257 has been introduced to provide workers' compensation coverage to volunteers who participate in search and rescue training operations or emergency management training, exercises or drills.

Senate Staff, Fact Sheet for H. 2257, Prepared for the Senate Committee on Commerce and Labor, 37th Legis., 1st Reg. Sess. (Ariz. 1985); *see also Hearing on H.2257 Before the Senate Comm. on Commerce and Labor., 37th Legis., 1st Reg. Sess. (Ariz. April 3, 1985) (testimony of sponsor regarding purpose of the bill).*

## Analysis

The 1985 amendments to A.R.S. § 23-901 unambiguously declare that time spent in search or rescue training exercises is to be considered in calculating workers' compensation benefits if the search or rescue training operation carries "a mission identifier assigned by the division of emergency management as provided in Section 35-192.01." A.R.S. § 23-901(5)(m). Although A.R.S. § 35-902.01 does not provide for mission identifiers, regulations promulgated by the Director of the Division of Emergency Management ("Division") authorize the Division to issue mission identifiers for search or rescue training operations. Arizona Administrative Code ("A.A.C.") R8-2-102(B)(1); *see also* A.A.C. R8-2-101(3) (definition of "mission"). As long as the Division issues a mission identifier for a search or rescue training operation, the activity should be included in the calculation of workers' compensation benefits. See A.R.S. § 23-901(5)(m).

## Conclusion

Because of the 1985 amendments to the workers' compensation laws, time spent in search or rescue training missions should be included in the calculations of workers' compensation benefits. To the extent that Ariz. Att'y Gen. Op. 185-027 is inconsistent with this conclusion, it is no longer correct.

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Attorney General

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