



ASSIGNMENT TO AND QUALIFICATION FOR DUTY

AVOIDING STORMS IN THE LEGAL OCEAN

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References

- **Auxiliary Manual COMDTINST M16790.1G**
 - Chapter 5, Section J. Assignment to Duty
 - Chapter 5, Section K. Claims, Injury, or Death While Assigned to Duty
- **14 U.S.C. §§ 821, 823a, 831, 832** (Administration of the Coast Guard Auxiliary—provided as an appendix here)





Legal Status of the Auxiliary

- The Auxiliary is a non-military organization established by Congress and administered by the Coast Guard. 14 U.S.C. § 821.
- The Auxiliary is a component of the Coast Guard **and is a federal agency.**
- The Auxiliary **is NOT** a § 501(c)(3) organization (i.e., non-profit)
- The CGAuxA, Inc. **is** a § 501(c)(3) corporation authorized by the Coast Guard to manage the fiscal affairs of the Auxiliary National Board.





Elected/Appointed Leaders' Responsibility

- Each member is responsible for knowing and adhering to USCG and Auxiliary rules and procedures (e.g., “knows or should know standard”)
- Elected and appointed leaders are responsible for disseminating information efficiently, effectively, and quickly down the chain of leadership to the deckplate.
- If the failure to pass relevant info results in a loss, injury to Aux member, or liability to a third party, **the leader** could be personally liable to the third party and/or to the other Aux member.





Qualified and Assigned to Duty

- **14 U.S.C. § 831. Assignment and performance of duties**
- Any such [Auxiliary] member may, under applicable regulations, be assigned duties, which, after **appropriate training and examination . . . has been found competent to perform, to effectuate the purposes of the Auxiliary** (“Qualified”)
- No member of the Auxiliary shall be placed in charge of a motorboat, yacht, aircraft, or radio station assigned to Coast Guard duty **unless . . . specifically designated by authority of the Commandant to perform such duty** (“Assigned”).
- Members of the Auxiliary, **when assigned to duties . . . [shall]** be vested with the same power and authority, in the execution of such duties, as members of the regular Coast Guard assigned to similar duty.





Assignment to Duty

- In the event of an “Incident”, a **Qualified Member** properly **Assigned to Duty** *should* have coverage *during the mission and also should have benefits and liability coverage en route* (to/from) the place of the mission, provided the mission is one in which an Auxiliarist is authorized by the AUXMAN to participate.





Assignment to Duty

- Assignment to duty is the critical and essential requirement for an Auxiliary member's eligibility for Federal statutory benefits and protection while performing an "authorized" Auxiliary mission.
- When assigned to duty, the AUX member is considered as a Federal Employee (under the Fed. Employt. Compensat. Act)
- Member must not only be **Assigned to Duty** but must also **Qualified for Duty** (i.e., currency maintenance, mandatory workshops, etc.).
 - Coverage *during* the mission
 - *Potentially* en route (to/from) the place of the mission
 - Mission must be one in which an Auxiliarist is authorized by the AUXMAN to participate.





Government Benefits and Protection

- The Coast Guard and federal government benefits and protection *may* include:
 - Medical coverage;
 - Reimbursement for personal property loss;
 - Lost wages;
 - Survivors' benefits; and
 - Insulation from personal liability for injury or damage to a third party and/or property.
- **Caveat – No “coverage” guarantee.**





Assignment to Duty

- Member assigned to duty must be acting within the scope of federal “employment” to be legally protected and be eligible for benefits.
- In the event of an incident, coverage is decided on the **facts and circumstances in each case**
 - Most likely will have coverage during authorized Auxiliary mission including en route to and from the place of the mission
 - *Excludes travel to and from flotilla meetings and social events —you are a private citizen for these activities.*





Independent Agency Determinations

- Coverage is contingent upon a **favorable determination that the Auxiliarist was acting within the scope of “employment”** as a Federal employee.
- Two outside agencies, the Department of Labor (DOL) and the Department of Justice (DOJ), make the determination under Federal law.
- If the Auxiliarist is **not assigned to duty (or qualified for duty), then he/she cannot be characterized as a Federal employee** and therefore cannot be acting within the scope of “employment.”
- Although both DOL and DOJ will consider a Coast Guard coverage recommendation, DOL and DOJ each make an independent investigation and determination for claims within their respective jurisdiction.





Qualified and Assigned to Duty

- **Example: MOM Patrol—mishap/incident/accident during patrol resulting in injury or property damage**
- **To prove Qualified for and Assigned to Duty:**
 - OPFAC has current inspection
 - Must have USCG orders
 - Currently qualified Coxswain
 - Currently qualified Crew and required number for vessel
 - Workshops, TCT training, etc. current for all crew
 - In the AOR as ordered
 - Conducting relevant mission activities
 - Conducted Risk Management assesment(s) as needed
 - Took reasonable precautions to prevent mishaps/incidents
 - Mishap/incident occurred in spite of all due care (i.e., was not willful or grossly negligent)





Authorization Verbally or in Writing

- An Auxiliarist performing such duties is considered to have been **assigned to duty**, within the meaning of 14 U.S.C. §§ 831 and 823a, **when these activities have been authorized and clearly communicated verbally and/or in writing by appropriate authority.** The Commandant has specifically delegated the authority to assign qualified Auxiliarists to duty for authorized activities as set forth below. . .
- Verbal orders should be documented by a phone log or an email confirming such orders





Orders

- In the event of an Incident, the strongest evidence that the Auxiliarist was acting within the scope of “employment” is a **writing** that demonstrates that his or her assignment to duty was made **prior** to the incident in question.
 - Coast Guard orders;
 - E-mail (preferred) or text message from/to appropriate elected or staff officer; or
 - Verbal authorizations to member documented contemporaneously via a telephone log or a written memo (email).





Orders

- Two type of **Coast Guard Orders** issued to Auxiliarists.
 - Orders for Facility Movement issued by Coast Guard OIA.
 - Orders Issued to Individuals by CG for duty assignments such as operational, logistics, or training support (watchstanding, C-Schools, etc).
- **Specific Auxiliary activities may also be considered “assignment to duty”**.
 - See AUXMAN, Chapter 5, Section J. Table 5-1.





Orders

- Operators of Auxiliary surface facilities (vessels), aircraft and radio facilities, including coxswains and aircraft commanders, are authorized to schedule Auxiliarists to duty as crew, air observers, watch-standers, or trainees aboard their facilities.
- The scheduling **shall constitute assignment to duty** under the provisions of 14 U.S.C. § 832a(b).
 - (b) A member of the Auxiliary while assigned to duty shall be deemed to be a Federal employee only for the purposes of the following: . . .





Incumbent Officers—Assigned to Duty

- Incumbent Auxiliary officers, both elected and appointed, are authorized to perform such activities required for the proper supervision and administration of their respective offices.
- Duties include, but are not limited to, the responsibilities of Auxiliary staff officers and elected and appointed leaders as described in Chapter 4 of the AUXMAN and in any associated letter of appointment.
- Auxiliarists performing such duties and activities shall be considered assigned to duty within 14 U.S.C. § 832.





Implicit Assignment to Duty

- Auxiliarists are considered implicitly assigned to duty when they perform many authorized activities for which they may claim Auxiliary activity hours without Coast Guard orders. Such activities include, but are not limited to:
 - Attending Auxiliary meetings
 - Performing training ashore
 - Performing administrative functions at home or in a residence
 - Performing Vessel Safety Checks (VSCs)
 - Teaching an Auxiliary Boating Safety Course
 - Manning a Public Affairs booth at a boat show
 - Meeting with other agency counterparts to coordinate boating safety efforts
- Implicit assignment to duty **does not constitute a guarantee of any liability** coverage by the Coast Guard if the circumstances of a claim, as determined by appropriate investigation, do not warrant such coverage.





Assignment to Duty Authority

- The Flotilla elected unit officers and appropriate Staff Officer for a particular mission or activity **has** assignment to duty authority.
- Only the FC, VFC, and the appropriate FSO for a particular mission or activity (e.g., the FSO-VE for a VE mission) has assignment to duty authority. (*Exception- Food Service)
- The assignment to duty at the flotilla level should **always be in writing**:
 - email is easiest for dissemination and retention;
 - text messaging is acceptable, but email is easier to maintain for records;
 - verbal orders should be logged (again an email is easiest).





Assignment to Duty Authority

- **DCDR and VCDR have limited assignment to duty authority**
 - DCDR has ATD authority as to the VCDR, the Division Staff officers, and Flotilla Commanders —**for Division matters only.**
 - No DCDR and/or VCDR ATD as to any other Division member or non-Division matter.
- **DSOs, ADSOs, SOs Lack of Assignment Authority; Exception**
- District and Division staff officers are assigned to duty and are charged with responsibility and authority for management, oversight, and coordination of matters within appointed responsibility and activity.
- **No DSO, ADSO, or SO has any authority to ATD any other Auxiliary member.**
- Exception: DSO has ATD for the ADSOs of that particular DSO
- Exception: Culinary Assistance (AUXCA, formerly AUXFS-Food Service)—Orders/ATD from SO-CA, DSO-CA, or ADSO-CA (or USCG order for deployment) *Inform DIRAUX of deployment
- **Generally, only the Flotilla Officers and Flotilla Staff Officers have ATD authority for missions such as VSC, PV, PA, etc.**
- **Coxswains and Air Commanders, have ATD authority for their crews/radio guards**





Scope of “Employment” (Duty)

- In any Incident (presuming, that the Auxiliary member is both qualified for and assigned to duty), the ultimate issue is whether the member was acting within the scope of “employment”—i.e., the mission
 - Was the Auxiliarist acting **within reasonable parameters of the assigned mission**?
 - If a member materially deviates from the authorized mission, coverage of an Incident resulting therefrom is unlikely.
- An Auxiliarist’s performance of duty is defined in 14 U.S.C. § 832 to include time engaged in traveling back and forth between the place of assigned duty and the Auxiliarist’s permanent residence.
- The question is whether the Auxiliarist is traveling to an assigned duty location to, “perform duties assigned by competent Coast Guard authority.”





Burden of Proof for ATD

- **Auxiliarist should document assignment to duty**
 - The greater the quality and quantity of evidence that the Auxiliarist is able to produce to demonstrate assignment to duty, the greater the likelihood that the DOL or DOJ will make a favorable determination.
- The AUXMAN (Para 5. J. 3 at pg 5-49) emphasizes that **the Auxiliarist ultimately bears the burden of producing evidence**
 - The strongest possible evidence is **demonstration of assignment to duty prior to the incident in question.**
- Examples may include:
 - Verbal orders issued by an appropriate Coast Guard Issuing Authority (OIA) and documented by e-mail or unit logs prior to mission execution
 - Written Coast Guard orders issued by an appropriate Coast Guard OIA and received and acknowledged by an Auxiliarist prior to mission execution.
 - Verbal authorizations from appropriate Auxiliary elected and/or appointed officers that are documented (via telephone log, e-mail, or other means),
 - Written Auxiliary orders or duty rosters for authorized activities that are received and acknowledged by an Auxiliarist prior to mission execution
 - See AUXMAN, Chapter 5, Section J, Table 5-1 at p. 5-50 for appropriate staff officer assignment.





No ATD—No Coverage

- It is critical that Auxiliary members always comply with the assignment to duty procedures for all missions.
- Absent proper scheduling for and assignment to duty, an Auxiliary member (even though qualified for a particular mission) may be determined to be:
 - (a) Not eligible for government protection against liability to a Third Party; and
 - (b) Not eligible for benefits for the member's own personal injury or property damage loss.
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- The AUXMAN makes this crystal clear: "The Auxiliarist's assignment to duty is a **requirement** before any statutory protections are available.
- If the Auxiliarist is not assigned to duty, then the Auxiliarist cannot be characterized as a Federal employee and therefore cannot be acting within the scope of employment." See AUXMAN Para 5. J. 3 at pg 5-48





Flotilla Meetings / Social Events

- The AUXMAN (Para 5. J. 1 at pg 5-48) **specifically excludes coverage** en route to/from Flotilla meetings
 - Attendance at a regular flotilla meeting is not the performance of duty assigned by competent Coast Guard authority at an assigned place of duty.
 - Consider: Federal Employees are not covered by FECA for any injuries sustained traveling to and from work.
 - This same principle applies to Auxiliarists—we are not covered going to and from flotilla meetings, since they are considered our “place of work.”
- There also is no coverage for purely social functions (e.g., a Flotilla or Division picnic).
 - Potentially shedule operation/duty activities in conjunction with such functions: Division picnic with VE, PA, Operations, etc.
 - CAVEAT: Assignment to duty only applies to members that are **qualified** and **participating in the assigned duty** activities (VE, PA, Ops, etc.)
 - Those members not qualified and not assigned to duty will NOT have ATD protection.





Practical Advice

- **Key things to remember are *Communication* and *Documentation***
- **Make sure there is awareness by leaders and staff**
- FSOs, Coxswains, Air Commanders should send written “orders” (email) to crew/radio guard/VE, PA, PV, PE, etc. notifying the date and time of a mission; copy FC/VFC/FSO so they are aware of the mission
- The Auxiliarist should acknowledge receipt (do not reply to all)
- The Auxiliarist should notify the FSO/Order issuer that he/she is leaving their residence and is en route to the activity
- Report in at the activity
- Afterwards, the Auxiliarist should notify the FSO/Order issuer that he/she is “secured” at home after the activity
 - Email is the easiest and best for record retention
 - Text messaging is acceptable, but it is more difficult to retain; generally fine for reporting “leaving home” / “secured at home”,





“On Your Own” Activities

- **E.g., PA, PV, VE, PE:**

- Notify the FSO and VFC/FC that you are requesting assignment to duty to do the activity
- The FSO/VFC should acknowledge and provide authorization; a simple “yes” is sufficient
 - “On own” Member should report to FSO when leaving home and when secured afterward
 - Text messaging is fine for such notices





Incidents/Accidents

- Cooperate with law enforcement and provide an honest account of the incident or accident
- Do NOT admit any liability (even if it was your fault)
- Adhere to State and Federal Laws for reporting incidents or accidents
- Make sure to seek medical attention for any significant injury (that cannot be treated by simple first aid)
- Make sure you, a fellow member/family member advise Flotilla leaders of any injury so a claim can be started and DIRAUX is notified
 - Must file claims within 30 days
- Document damage to your property or third-party property and any witnesses (photos, contact information, etc.)
- Share your own insurance information, but inform the other party that the Federal Government may be involved in settling any claims
- ***Notify your insurance (but you MAY be covered by the Federal Government for the incident)
 - See AUXMAN Chapter 5 section J





Example

- A qualified crew member was injured while on a USCG ordered patrol. All aspects of the patrol were compliant with USCG standards. The member had no medical insurance, and the injury caused the member to lose employment.
- Likely would be considered “assigned to duty” and qualified for duty under Coast Guard orders.
- Would be eligible for medical coverage and potentially lost wages
- A Trainee would also likely be covered, provided that all other aspects were in compliance.





Example

- An Auxiliary facility crew is on patrol and pulls in for a lunch break at a boat ramp. A member is sent to take his truck and get sandwiches. On the way, the member has an accident and does minor damage to the vehicle.
- The damage claim was denied because the trip for sandwiches was outside of the scope of duty while on a surface patrol. The member's auto insurance would cover the damage.
 - This was a “detour” from the scope of duty
- *Cf.* If the crew member had the accident en route to or from the patrol, it *may* have been covered
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Example

- While traveling under orders a member suffers an engine breakdown on the highway.
- A claim for damage was denied because vehicle “wear and tear” is covered as part of the mileage rate provided while under orders.
- Same applies to trailer bearings, transmissions, tires, etc. These are considered “normal wear and tear.”





Example

A qualified VE left his/her home and went to the local boat ramp to perform VSCs. The VE did not tell anyone he/she was going to do VSCs. He/she fell and broke an arm at the ramp.

- The VE is qualified, but not formally assigned to duty. He/she should have notified the FSO-VE/FC/VFC before leaving to establish ATD. The VE is implicitly assigned to duty, but *may* not be covered; the facts will dictate whether the VE is covered
 - From AUXMAN: A last-minute decision to participate in a mission, or participation in response to a short-notice request for assistance, **does not relieve an Auxiliarist from attempting to make advance notification**. For example, a VE who plans to respond to a request for a VSC should still, as a minimum, attempt to advise the FSO-VE in advance. Advance verbal or e-mail notice of intent, even if not acknowledged, constitutes Auxiliary unit level awareness for this purpose.
 - Failure to attempt to appropriately attain unit-level awareness in accordance with these provisions **may jeopardize an Auxiliarist's recognition as having been properly assigned to duty**, implicitly or otherwise, and may place an Auxiliarist at considerable risk in terms of subsequent reimbursements, scope of employment determinations, and liability coverage.
- Cf. What if the VE was the FSO-VE?
 - May be a different outcome; but member should have notified VFC/FC he/she was performing VSCs.





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Questions?





14 U.S.C. § 821. Administration of the Coast Guard Auxiliary

(a) The Coast Guard Auxiliary is a nonmilitary organization administered by the Commandant under the direction of the Secretary. For command, control, and administrative purposes, the Auxiliary shall include such organizational elements and units as are approved by the Commandant, including but not limited to, a national board and staff (to be known as the “Auxiliary headquarters unit”), districts, regions, divisions, flotillas, and other organizational elements and units. The Auxiliary organization and its officers shall have such rights, privileges, powers, and duties as may be granted to them by the Commandant, consistent with this title and other applicable provisions of law. The Commandant may delegate to officers of the Auxiliary the authority vested in the Commandant by this section, in the manner and to the extent the Commandant considers necessary or appropriate for the functioning, organization, and internal administration of the Auxiliary.

(b) Each organizational element or unit of the Coast Guard Auxiliary organization (but excluding any corporation formed by an organizational element or unit of the Auxiliary under subsection (c) of this section), shall, except when acting outside the scope of section 822, at all times be deemed to be an instrumentality of the United States, for purposes of the following:

- (1) Chapter 26 of title 28 (popularly known as the Federal Tort Claims Act).
- (2) Section 2733 of title 10 (popularly known as the Military Claims Act).
- (3) Section 30101 of title 46 (popularly known as the Admiralty Extension Act).
- (4) Chapter 309 of title 46 (known as the Suits in Admiralty Act).
- (5) Chapter 311 of title 46 (known as the Public Vessels Act).
- (6) Other matters related to noncontractual civil liability.

(c) The national board of the Auxiliary, and any Auxiliary district or region, may form a corporation under State law in accordance with policies established by the Commandant.

(d)(1) Except as provided in paragraph (2), personal property of the auxiliary shall not be considered property of the United States.

(2) The Secretary may treat personal property of the auxiliary as property of the United States—

(A) for the purposes of—

- (i) the statutes and matters referred to in paragraphs (1) through (6) of subsection (b); and
- (ii) section 641 of this title; and

(B) as otherwise provided in this chapter.

(3) The Secretary may reimburse the Auxiliary, and each organizational element and unit of the Auxiliary, for necessary expenses of operation, maintenance, and repair or replacement of personal property of the Auxiliary.

(4) In this subsection, the term “personal property of the Auxiliary” means motor boats, yachts, aircraft, radio stations, motorized vehicles, trailers, or other equipment that is under the administrative jurisdiction of the Coast Guard Auxiliary or an organizational element or unit of the Auxiliary and that is used solely for the purposes described in this subsection.

(Aug. 4, 1949, ch. 393, 63 Stat. 555; Pub. L. 104–324, title IV, §401(a), Oct. 19, 1996, 110 Stat. 3922; Pub. L. 108–293, title II, §226, Aug. 9, 2004, 118 Stat. 1041; Pub. L. 109–304, §17(c), Oct. 6, 2006, 120 Stat. 1707.)





14 U.S.C. § 831. Assignment and performance of duties

No member of the Auxiliary, solely by reason of such membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Coast Guard or the Reserve, except that any such member may, under applicable regulations, be assigned duties, **which, after appropriate training and examination, he has been found competent to perform, to effectuate the purposes of the Auxiliary.** No member of the Auxiliary shall be placed in charge of a motorboat, yacht, aircraft, or radio station assigned to Coast Guard duty unless he has been specifically designated by authority of the Commandant to perform such duty. Members of the Auxiliary, when assigned to duties as herein authorized shall, unless otherwise limited by the Commandant, be vested with the same power and authority, in the execution of such duties, as members of the regular Coast Guard assigned to similar duty. When any member of the Auxiliary is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government, and no per diem shall be paid for any period while such member is performing duty on a vessel.

(Aug. 4, 1949, ch. 393, 63 Stat. 556; Pub. L. 104-324, title IV, §404(b), Oct. 19, 1996, 110 Stat. 3924.)





14 U.S.C. § 823a. Members of the Auxiliary; status

(a) Except as otherwise provided in this chapter, a member of the Coast Guard Auxiliary shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, Federal employee benefits, ethics, conflicts of interest, and other similar criminal or civil statutes and regulations governing the conduct of Federal employees. However, nothing in this subsection shall constrain the Commandant from prescribing standards for the conduct and behavior of members of the Auxiliary.

(b) A member of the Auxiliary while assigned to duty shall be deemed to be a Federal employee only for the purposes of the following:

(1) Chapter 26 1 of title 28 (popularly known as the Federal Tort Claims Act).

(2) Section 2733 of title 10 (popularly known as the Military Claims Act).

(3) Section 30101 of title 46 (popularly known as the Admiralty Extension Act).

(4) Chapter 309 of title 46 (known as the Suits in Admiralty Act).

(5) Chapter 311 of title 46 (known as the Public Vessels Act).

(6) Other matters related to noncontractual civil liability.

(7) Compensation for work injuries under chapter 81 of title 5.

(8) The resolution of claims relating to damage to or loss of personal property of the member incident to service under the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 3721).¹

(9) On or after January 1, 2001, section 651 of Public Law 104–208.

(c) A member of the Auxiliary, while assigned to duty, shall be deemed to be a person acting under an officer of the United States or an agency thereof for purposes of section 1442(a)(1) of title 28.

(Added Pub. L. 104–324, title IV, §403(a), Oct. 19, 1996, 110 Stat. 3923; amended Pub. L. 107–295, title IV, §415, Nov. 25, 2002, 116 Stat. 2121; Pub. L. 109–304, §17(c), Oct. 6, 2006, 120 Stat. 1707.)





14 U.S.C. § 832. Injury or death in line of duty

When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any duty to which he has been assigned by competent Coast Guard authority, such member or his beneficiary shall be entitled to the same benefits provided for temporary members of the Reserve who suffer physical injury or death resulting from physical injury incurred incident to service. Members of the Auxiliary who incur physical injury or contract sickness or disease while performing any duty to which they have been assigned by competent Coast Guard authority shall be entitled to the same hospital treatment afforded members of the Coast Guard. The performance of a duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a member of the Auxiliary.

(Aug. 4, 1949, ch. 393, 63 Stat. 556; Pub. L. 93-283, §1(15), May 14, 1974, 88 Stat. 141; Pub. L. 98-557, §15(a)(3)(D), Oct. 30, 1984, 98 Stat. 2865; Pub. L. 104-324, title IV, §404(c), Oct. 19, 1996, 110 Stat. 3924.)

