

## **ASSIGNMENT TO DUTY -- "INCIDENT COVERAGE"**

1. **The Basics**. For an Auxiliary member to have any expectation of having the coverage afforded by Congress and the Coast Guard, that member must be performing (or be *en route* to/from) a mission that is authorized by the Commandant for Auxiliary participation, that member must be qualified to perform the mission, that member must be properly assigned to duty to perform that mission, and the member must be acting within the scope.

2. **NO "Coverage" Guarantee**. The Coast Guard Authorization Act of 1996, as amended to date **not** an absolute guarantee of coverage in every case. In the event of an "Incident" during an Auxiliary mission, the coverage issue in each case is decided on its own facts and circumstances. The Coast Guard investigates and makes the determination whether there is coverage for Auxiliary property loss claims; the Department of Labor ("DOL") for Auxiliary members' injury or death claims; the Department of Justice ("DOJ") for Third Party claims for property damage, injury, and/or death. Although both DOL and DOJ will take into account a Coast Guard coverage recommendation, DOL and DOJ each make an independent investigation and determination for claims within their respective jurisdiction.

3. **Auxiliary Coverage Benefits**. 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. The Coast Guard and federal government benefits and protection may include medical coverage, reimbursement for personal property loss, educational and survivors' benefits, and insulation from personal liability for injury or damage to a Third Party person and/or property.

4. **"Qualified for" AND "Assignment to Duty"**. To be eligible for coverage benefits, an Auxiliary member must conform to the minimum rules and procedures established by the Commandant (generally found in the AUXMAN and/or the Auxiliary Operations Policy Manual, COMDTINST M16798.3E (the "OPMAN"). It is **extremely important** that members understand the **distinction between: (a) qualification for duty; and (b) assignment to duty**--and comply with the assignment to duty requirement. To be "qualified for duty," certain Auxiliary programs require that a member be "current" (specifically trained for and holding official program certification in the form of a certificate or other writing) in all certification requirements for that particular program (e.g., surface and air operations, vessel examination, instructor). Most such programs impose annual requirements (and/or periodic, mandatory workshops) to maintain currency. Should the member fail to perform all annual requirements, that member will be placed in REYR or REWK status. While in REYR or REWK status, the member is **not currently certified** and therefore is not authorized to participate in the particular program area. That status continues until the member performs the requirements to get out of REYR or REWK status **and** the Director recertifies the member. For example, a vessel examiner who fails to perform the required minimum 5 vessel safety checks during the year will be placed in REYR status. Until that vessel examiner completes the requirements for recertification (currently 2 supervised VSCs) **and** the Director recertifies the VE, the VE is not recertified. Until recertified, the VE is not authorized to perform any more VSCs. Other program areas may require only that the

person be an Auxiliary member to be “qualified for duty” (such as standing watch at a Public Affairs booth).

Even though a member may be qualified for a particular mission or activity (e.g., a VE is qualified to perform VSCs), **to be eligible for full "coverage" the member also must be assigned to duty** for the particular mission by the Coast Guard or an authorized Auxiliary officer. The AUXMAN seems to indicate by virtue of performing an authorized mission, an Auxiliary member who is qualified to conduct the mission and who acts within the scope of employment that member is assigned to duty without any formal assignment. Don't believe it—it is the member's responsibility to make sure that the member's assignment to duty be documented before conducting the mission.

5. **Assignment Authority: Non-Delegation.** Orders for water, air, and vehicular Patrol operations can be issued **only** by the Coast Guard--that is the assignment to duty. The AUXMAN specifies those Auxiliary members with authority for assigning and scheduling members to duty for other Auxiliary missions (SEE, e.g., AUXMAN Table 5-1 at 5-50). At the Flotilla level, the FC, VFC, and the appropriate staff officer for a particular mission/activity (e.g., the FSO-VE for a VE mission) each have assignment to duty authority **over members of their particular flotilla only**. That authority generally cannot be delegated to any other member. The assignment to duty always should be scheduled in writing. **NOTE: there are special assignment to duty rules for AUX Chaplains and Culinary Assistants.**

6. **DCDR and VCDR Limited Assignment Authority.** Division elected officers have limited assignment to duty authority. The DCDR has assignment to duty authority as to the VCDR, the Division Staff officers, and Flotilla Commanders--for Division matters only. As Division Chief of Staff, a VCDR has assignment to duty authority with respect to each of that Division's staff officers—for Division matters only. There is, however, **no** DCDR and/or VCDR assignment to duty authority as to any other Division member or non-Division matter.

7. **DDCs, DSOs, ADSOs, SOs Lack of Assignment Authority; Exception.** District and Division staff officers are by their appointment assigned to duty and are charged with responsibility and authority for management, oversight, and coordination of matters within their appointed sphere of responsibility and activity. With one exception, however, **no** DDC, DSO, ADSO, or SO has any authority to assign to duty any other Auxiliary member. The sole exception is that a DSO has assignment to duty authority for the ADSOs of that particular DSO, within the scope of the DSO's particular Auxiliary activity. AUXMAN Para 4.G.7. In other words (with the single DSO exception), generally **only** the Flotilla "working level" Auxiliary staff officers--the FSOs--have assignment to duty authority.

8. **No Assignment to Duty--No Coverage.** It is absolutely **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) is: (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. (For example, a VE-qualified member who "goes off on her/his own" to do VSCs without being assigned to duty is at risk of loss of benefits and personal liability exposure to Third Parties.) 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."** (AUXMAN Para 5.J.3 at 5-48; emphasis added)

9. **"Scope of Employment".** In any Incident (presuming, first, 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., acting within reasonable parameters of the assigned mission. If the member materially deviates from the authorized mission, there probably is no coverage if an Incident then results.

10. **Burden of Proof in Assignment to Duty.** The AUXMAN emphasizes that the Auxiliary member bears the burden of producing evidence to support a "covered" claim and the member should be prepared to document assignment to duty: **"The strongest possible evidence is that which demonstrates assignment to duty made prior to the incident in question. Examples may include verbal orders issued by an appropriate Coast Guard Order Issuing Authority (OIA) and documented by e-mail or unit logs prior to mission execution or written orders issued by an appropriate Coast Guard OIA and received and acknowledged by an Auxiliarist prior to mission execution. Similarly, verbal authorizations from appropriate Auxiliary elected and/or appointed leaders that are documented via telephone log, e-mail or other means, as well as written Auxiliary orders or duty rosters for authorized activities (see Table 5-1) that are received and acknowledged by an Auxiliarist prior to mission execution. . ."** (Emphasis added). (AUXMAN 5-48, 49.)