

## **New Jersey Moves Toward Law That Would Provide Job Protection For Volunteer Emergency Responders**

by **Daniel R. Levy**

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On June 25, 2009, the New Jersey Assembly voted in favor of Bill Number 1263, known as the “Emergency Responders Employment Protection Act.” If enacted into law, the Act would prohibit employers from terminating, dismissing or suspending an employee who fails to report for work because he or she is serving as a “volunteer emergency responder” who is either: (1) actively engaged in responding to an emergency alarm; or (2) volunteering as an emergency responder during a state of emergency declared by the President of the United States or the Governor of the State of New Jersey. The 76-3 vote by the Assembly to approve the bill is the latest step in the legislative process, and the bill will next be considered by the New Jersey Senate.

The bill defines “volunteer emergency responder” as, among others, an active member in good standing of a volunteer fire company, a volunteer member of a rescue or ambulance squad or duly incorporated first aid squad, provided that the member’s official duties include responding to a fire or emergency call. The Act would require volunteer emergency responders to take certain actions in order to be afforded the protections of the Act. First, the volunteer emergency responder would have to provide at least one hour’s notice to his or her employer, that he or she is rendering emergency services in response to an emergency alarm or in response to a declared state of emergency. Second, the bill requires that the volunteer emergency responder, upon returning to his or her place of employment, provide the employer a copy of the incident report and a certification by the incident commander affirming that the volunteer emergency responder was actively engaged in, and necessary for, rendering emergency services. The certification must also set forth the date and time the volunteer emergency responder was relieved from emergency duty.

As passed by the Assembly, the bill would not require employers to pay an employee for any time that the employee missed while serving as a volunteer emergency responder. The employee, however, may charge his absence as a vacation day or sick day provided the employee has such days available. In addition, the bill would not provide protection to employees who, by statute or contract, are deemed “essential” employees.

Volunteer emergency responders and New Jersey employers should be cognizant of the

provisions contained in the bill and note that the bill has not yet been enacted into law, although there is a strong possibility of its enactment. Volunteer emergency responders and employers should also keep in mind that some of the provisions of the bill may be amended or changed before it is voted on by the Senate or considered by the Governor for enactment. In the event that the bill is enacted into law, volunteer emergency responders, volunteer rescue squads and fire companies, and New Jersey employers should take certain steps to prepare to comply with the Emergency Responders Employment Protection Act.

If the bill is enacted with the same provisions as was approved by the Assembly, volunteer rescue squads and fire companies may desire to alter their Standard Operating Procedures to designate appropriate procedures that would allow for the volunteer emergency responder to obtain a copy of the incident report and obtain a certification from the incident commander or crew chief. Officers of volunteer rescue squads and fire companies should remember that, even though not currently stated in the bill, all protected health information contained within an incident report should be removed before a volunteer emergency responder provides his or her employer with a copy of such report. Even if the regulations regarding protected health information promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") do not apply to a specific volunteer agency, the unauthorized disclosure of confidential patient information by New Jersey Emergency Medical Technicians is prohibited under N.J.A.C. 8:40A-10.2(b)(8). Employers, including all paid Emergency Medical Services agencies and paid fire departments, should be prepared to implement appropriate policies to ensure that supervisors do not take adverse employment actions against volunteer emergency responders who miss time from work due to the rendering of emergency services. Volunteer emergency responders who live in New Jersey but are employed outside of the state should be aware that they may not be protected if the bill is enacted into law.

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