

SOCIAL SECURITY

NOV 03 2004

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Mr. Howard Egerman, Committee Co-Chair
AFGE, National Council of SSA Field Operations
3216 Davis Street
Oakland, CA 94601-2608

Dear Mr. Egerman:

This responds to your inquiry concerning the legal representation of SSA employees if "sued for performing CPR or First Aid while on duty in a Field Office." This inquiry was submitted in your collective official capacities as AFGE (Union) representatives on the National Field Council Health and Safety Committee. The AFGE General Committee also raised at a monthly Union Management Committee meeting the issue regarding the liability of SSA volunteers should they be the subject of a civil or criminal action as a result of their performance of CPR. SSA sought guidance from the Department of Justice since it is the Federal department that is charged with providing legal representation to Federal employees when sued in an individual capacity. SSA has no legal authority to provide such representation. Rather, the Department of Justice makes both the determination whether or not to provide legal representation, and if it is decided to provide such representation, actually provides Department of Justice attorneys as legal counsel to the Federal employee. Attached is a letter to the AFGE General Committee and the Department of Justice guidance.

Sincerely,

Barbara A. Gonzales

David L. Feder
David L. Feder
Associate Commissioner
Office of Labor-Management
and Employee Relations



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Ms. Cynthia Ennis, Spokesperson
SSA/AFGE General Committee
6401 Security Blvd
G-314 West High Rise Building
Baltimore, MD 21235

Dear Ms. Ennis:

The Social Security Administration has had a successful, ongoing training and certification cardiopulmonary (CPR) program for many years thanks to the dedication of SSA employee volunteers. The program at SSA is administered by the Office of Facilities, Assessment and Management. In Fiscal Year 2003, 4,490 SSA volunteer employees attended CPR training. Training SSA's volunteers cost the Agency \$203,246 last year, an average cost of about \$50 per employee. There is at least one volunteer employee in each of SSA's offices who has taken CPR training and has been certified. We are hopeful that an equal number of volunteer employees will continue to elect to attend CPR training. I want to take this opportunity to thank you and your membership for the continued support of this very important program.

The American Federation of Government Employee General Committee raised a question at a monthly Union Management Committee meeting regarding the liability of SSA volunteers should they be the subject of a civil or criminal action as a result of their performance of CPR. SSA sought guidance from the Department of Justice since it is the Federal department that is charged with providing legal representation to Federal employees when sued in an individual capacity. SSA has no legal authority to provide such representation. Rather, the Department of Justice makes both the determination whether or not to provide legal representation, and if it is decided to provide such representation, actually provides Department of Justice attorneys as legal counsel to the Federal employee. The guidance for the Department of Justice is attached.

Our interpretation of the Department of Justice guidance is that Federal employees who are not health care professionals most probably would not receive legal representation from the Department of Justice if sued in a state civil court or charged in a criminal proceeding as a result of their performance of CPR on an SSA employee or visitor while in a duty status on SSA property. Although there may be circumstances where the Department of Justice will provide representation, SSA wanted to inform its employees of the possibility that in the extremely rare circumstance where an SSA employee is sued, it is quite possible that the Department of Justice would decide that it is not appropriate under the applicable statutes to provide legal representation. Please note that this

Department of Justice conclusion is applicable to all Federal Departments and agencies, not just SSA, and SSA has no authority to challenge or ignore Department of Justice decisions. Please be assured, however, that should that extremely rare circumstance ever occur where an SSA employee is sued, SSA will make every possible effort and take all actions necessary to support the position that the Department of Justice should provide representation.


Aside from the issue of legal representation, Federal employees most probably would not be held liable under the applicable state law. However, some of our CPR trained employees may be under a misunderstanding that since their actions in performing CPR most likely would be protected and not held liable under the various state "Good Samaritan" laws, they also would receive legal representation from the Federal Government if ever the subject of a civil or criminal action. Accordingly, the Agency wanted to share this information with you.

Employees who have taken SSA sponsored CPR training are volunteers and their training, of course, is applicable to all situations where CPR is required, whether or not at the work site. Although the training is sponsored by SSA for the protection of SSA employees and visitors who may need CPR with the expectation that the trained SSA employees would perform CPR in those rare situations when required, there is no employment obligation for any trained SSA employee to do so.

We are hopeful that even with this clarification of the Federal Government's policy on providing legal representation, that SSA employees will continue to show their leadership and dedication by volunteering to be CPR trained and certified. SSA, of course, will continue to commit its resources to provide the training. Please contact me if you have any questions.

Sincerely,



 David L. Feder
Associate Commissioner
Office of Labor-Management
and Employee Relations

Attachment

**U.S. Department of Justice****Civil Division, Torts Branch
Federal Tort Claims Act Staff****Phyllis J. Pyles
Director****Past Office Box 888
Benjamin Franklin Station
Washington, D.C. 20044****Telephone: (202) 616-4252
Facsimile: (202) 616-5200****PJP:RDEinerson:tlg**

September 20, 2004

**Honorable Lisa deSoto
General Counsel
Social Security Administration
Room 600, Altmeyer Building
6401 Security Blvd.
Baltimore, MD 21235**

Dear Ms. deSoto:

Thank you for your inquiry about whether a non-medical employee of a federal agency is covered under the Federal Tort Claims Act (FTCA) for common law tort claims arising from the employee's provision of CPR at work on a voluntary basis. The determination of whether any employee of the United States is covered under the FTCA for any type of claim of negligence is, by legal necessity, done on a case-by-case basis. In the absence of a specific claim, we can provide only general guidance.

The FTCA permits, with certain exceptions, suits against the United States for "claims . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b).

In order to impose liability under the FTCA, it must be shown that the person whose conduct is at issue was a federal employee acting within the scope of employment. If so, the FTCA provides the exclusive remedy and, therefore, the employee cannot be held liable for any negligence.

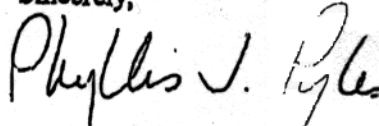
The determination as to whether the individual was acting within the scope of his or her employment is governed by state law. See, e.g., Williams v. United States, 350 U.S. 857 (1955). In each case, the specific facts must be analyzed under the law of the state where the act or omission occurred.

Because state laws vary widely, conduct that is within the scope of employment under one state's law may be outside the scope of employment under a different state's law.

As a general matter, if a federal employee is required to provide CPR as part of his or her employment contract, the employee's conduct most likely would be deemed within the scope of employment. On the other hand, if a federal employee's duties do not entail this responsibility, he or she may or may not be deemed within the scope of employment when performing CPR, depending on the precise factual circumstances and the law of the particular state.

For this reason, we cannot give definitive guidance on the issue that you have raised. However, in the event a suit arises, the views and recommendation of your agency will be sought as a part of the process of determining whether the conduct at issue was undertaken within the scope of employment.

Sincerely,



Phyllis J. Pyles
Director, FTCA Staff