

DOSH DIRECTIVE

Department of Labor and Industries

Division of Occupational Safety and Health

Keeping Washington safe and working

1.96

Volunteers, Students, and DOSH Jurisdiction

Date: October 18, 2012

I. Purpose

This Directive provides guidance for compliance and consultation staff in determining, for purposes of DOSH jurisdiction, whether an individual who is providing personal labor and is represented to be a volunteer or student, is in fact an employee of an organization, sponsor, company, contractor, or other entity.

II. Scope and Application

This Directive applies to DOSH operations statewide. It replaces all previous instructions on this issue, whether formal or informal.

III. References

- RCW 49.17.020(4),(5),(6),(8)
- DOSH Compliance Manual
- Insurance Services Policy Manual, Employer Services, Defining Volunteers for Industrial Insurance Coverage, Policy 61.06

IV. Background

CSHOs occasionally inspect worksites where persons who perform work are referred to as volunteers or students, but who have an employee-employer relationship based on the provision of some form of compensation or, in some cases, only the provision of industrial insurance. Volunteers and students may have distinct relationships with their sponsors, but the relationships have common traits when they take the form of an employer-employee relationship.

The volunteer or student issue may be raised by the individual performing work, by those overseeing or sponsoring their work, and/or by the CSHO through his or her interviews. DOSH jurisdiction may not be clear, especially if compensation occurs through means other than check or cash. Further, in some situations determining who may be an employer among sponsors, companies, or other third parties, directing the work onsite can become complex and require assistance from the Attorney General's Office. This Directive provides guidance to assist the CSHO in determining DOSH jurisdiction.

Other related jurisdictional issues include independent contractors, multi-employer worksites (DOSH Compliance Manual), home owners (DD 1.19), dual employers (DD 1.15), and situations between contractors and subcontractors which call for the application of Contractor Responsibility Under *Stute v. PBMC*, (DD 27.00).

V. **Definitions**

- **Volunteer** - A person who performs a service or personal labor willingly and without wages or other forms of meaningful compensation.
- **Student** - A person formally engaged in learning and enrolled in a school or college.

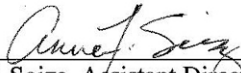
VI. **Enforcement Policies**

- A. An inspection may be assigned in accordance with the DOSH Compliance Manual in cases of personal labor by volunteers or students, where there is a possible safety or health violation and DOSH may have jurisdiction as addressed by this Directive. The Regional Compliance Supervisor may screen allegations and interview the source of the complaint or referral to determine if an inspection is merited. The Compliance Operations Manager may be contacted for assistance.
- B. The CSHO needs to examine each party's role in providing the personal labor. Documentation is needed on the levels of direction or supervision, and whether and what type of compensation was provided to individuals, sponsors, or organizations for the personal labor. Copies of relevant material should be obtained, such as contracts and pay stubs or other records of compensation. Also of possible determinative value is whether industrial insurance, full or medical aid, was provided to the individual performing the work.
- C. Meaningful compensation for labor can be an element for establishing DOSH jurisdiction in cases of students and alleged volunteers. Compensation can take many forms beyond cash or a check and include things of value, for example, gift cards, food, lodging, clothing, counseling, or other services.
- D. The provision of workers compensation or medical aid without other meaningful compensation can be an element for establishing DOSH jurisdiction in cases of students and volunteers as addressed in this Directive.
- E. Questions provided in Appendix A, should assist the CSHO in gathering facts that will help decide jurisdiction. The CSHO's Supervisor needs to inform the Regional Compliance Manager, who may coordinate with the Compliance Operations Manager for assistance by the AGO.
 1. The initial questions are ones normally asked by CSHOs in matters of jurisdiction, and in many cases will suffice.
 2. Complex situations such as in paragraphs I and K, below, usually require more in-depth follow-up questions as detailed in Appendix A.

3. One of the key questions is whether compensation has been provided for personal labor. Also to be considered is whether the compensation item(s) in total are of nominal or trivial value or could reasonably be considered compensation with respect to the labor provided.
- F.** Volunteers and students are *not* covered by DOSH if they are *not* provided meaningful compensation for their work (as described in paragraph C, above) and are *not* provided or required to be provided any industrial insurance under RCW Title 51, Industrial Insurance.
- G.** Volunteers are covered by DOSH if doing labor for a private sector employer, a for-profit organization, or a state agency not excluded by paragraph H. These employers are required to provide industrial insurance to volunteers under RCW Title 51.
- H.** Volunteer emergency services workers are not covered by DOSH. Industrial insurance under RCW Title 51, is not required. The Dept. of Emergency Services administers these volunteer activities that can include mountain search and rescue, explorer scout trackers, volcanic eruption response, and sand bagging during floods. The local jurisdiction (usually the Sheriff's office) registers these volunteers.
- I.** Students and other volunteers not addressed in paragraphs G and H, who are provided industrial insurance (full workers compensation or medical aid alone) may be covered by DOSH. The CSHO needs to use the questions in Appendix A, and have the case reviewed as described in paragraph E, above.
- J.** Industrial insurance coverage of a worker may be verified for those businesses with an account by contacting the assigned L&I policy manager found in LINIIS (use the LINIIS command PMCT.) General questions concerning application of Insurance Services Policy 61.06 on volunteers and students may be directed to L&I Employer Services Technical Support at (360) 902-4788.
- K.** An individual identified as an *intern* may be asked questions from Appendix A, and accordingly assessed for DOSH jurisdiction as a volunteer or student (see definitions) or an employee using this Directive.
- L.** Fire departments and their volunteer fire fighters are covered by DOSH per WAC 296-305-01005, definitions for Member and Fire Fighter, and WAC 296-305-01003(2).
- M.** Organizations providing housing, food, and/or counseling services to “students” or “volunteers” may be covered by DOSH through a type of dual employer arrangement with a third or controlling party utilizing and/or directing the personal labor. DOSH coverage is dependent on a number of variables. The CSHO needs to use the questions in the Appendix and have the case reviewed as described in paragraph E, above.

- N. Any other inspections assigned after review by the Regional Compliance Supervisor of other personal labor arrangements for volunteers or students not addressed above may utilize the Appendix and have the case reviewed as described in paragraph E, above.

Approved: _____


Anne F. Soiza, Assistant Director
Division of Occupational Safety and Health
Department of Labor and Industries

[Appendix A, Jurisdiction Questions, is attached to this Directive]

For more information about this or other DOSH directives, contact the Division of Occupational Safety and Health at P.O. Box 44610, Olympia, WA 98504-4610, or call (360) 902-5436. To review policy information on the DOSH website, go to: <https://lni.wa.gov/safety-health/safety-rules/enforcement-policies/>.

APPENDIX A JURISDICTION QUESTIONS

A. Definitions

“Individual” refers to the person performing work, who may be a volunteer, a patient, an intern, student, or an employee.

“Sponsoring organization” refers to an organization (whether an individual, a church, a state agency, a rehabilitation organization, an employer, or other) that has a relationship with the individual. A sponsoring organization may also be the controlling party.

“Controlling party” refers to an individual, employer, contractor, or an organization that may be receiving some benefit from the work that the individual is doing and is directing or supervising the work performed. Depending on the circumstances, there may or may not be a controlling party in a given situation.

B. Initial Questions

The below questions should be asked first to determine DOSH jurisdiction for issues involving a volunteer or student performing work. The CSHO’s goal is to determine if the individual is an employee and if the sponsoring organization and/or the controlling party is an employer for the purposes of WISHA.

If the answers to the initial questions are all No, then in most cases DOSH has no jurisdiction.

If the answers differ between the individual and the representative, or are all Yes, then the CSHO should continue with the follow-up questions.

Individual who provided personal labor:

1. Are you being paid for the work? By who? What work are you performing? What is the relationship (in terms of type of work and physical proximity) between the work of the paid employees and you? Do you consider yourself an employee? Why or why not?
2. Do you receive, or expect to receive, anything from the sponsoring organization or the person who supervises you or directs your work at the site? This could include cash, checks, meals, lodging, clothing, counseling services, etc. If the answer to this question is Yes, what do you receive or expect to receive? (CSHOs should get any documentation of “compensation” they can.)
3. Are you provided any insurance? If so, who is paying for it? Do you know what it covers? Who pays for the medical costs if you get injured working here? (CSHOs should get any documentation available for insurance provided to the individual.)

APPENDIX A
JURISDICTION QUESTIONS
(continue)

Representative for the sponsoring organization or controlling party:

1. Are there any individuals at the job site who are being paid? Who? Who pays them? What work are they performing? Do you consider yourself an employer of _____? Is there anyone else at the site who may consider _____ as an employee?
2. Does the individual receive, or expect to receive, anything from the sponsoring organization or the party who supervise or directs the work at the site? This might include cash, checks, meals, lodging, clothing, counseling services, etc. If the answer to this question is Yes, what does the individual receive or expect to receive? (CSHOs should get any documentation of “compensation” they can.)
3. Are the individuals performing work provided any insurance? If so, who is paying for the insurance? Who is the insurance carrier? Is the insurance workers compensation insurance, full coverage, or just medical aid? (CSHOs should get any documentation available for insurance provided to the individual.)

C. Follow-up questions.

The CSHO needs to phrase the questions appropriately for who the person answering the questions represents. Because situations are variable, some questions may not apply in certain situations.

The nature of compensation to the individual:

1. If the individual did not perform that work, would the sponsoring organization still provide the same compensation? If the sponsoring organization did not provide the same compensation, would the individual still perform the same work?
2. Why does the sponsoring organization provide the compensation?
3. Is it the belief of the individual, the sponsoring organization, or the third party that the work performed by the individual may in some way lead to a paid position with either the sponsoring organization or the third party? Do any of the involved parties think that the individual might be benefited in some other way by the work the individual is performing, such as receiving an additional internship, receiving credit for community service, or receiving credit toward some other accomplishment?
4. Is the individual receiving any kind of academic credit for the work the individual is performing? If so, what is the name of the academic institution? What is the name of the individual’s academic adviser?

APPENDIX A
JURISDICTION QUESTIONS
(continue)

The nature of the individual:

1. Is the individual dependent on the sponsoring organization for any life necessities – food, lodging, transportation, clothing, etc? Which ones?
2. Was the individual's participation part of some goal other than compensation, such as rehabilitation/discipline/ structure? If so, what was that goal? Is there any expectation that the individual will receive any kind of penalty for NOT performing the work?
3. How did the individual end up working on this site as a volunteer or student?
4. Does the individual have employment elsewhere?
5. Did the individual bring tools to the job? Did he or she have to interview to get this job? Did they have skill requirements?
6. Can the individual come and go as they please or do they need to clock/check in and out? Are there set breaks and meal periods? What happens if they are late or don't show up?
7. Who provides transportation to and from the job site? Who pays for mileage or the gas?
8. Are meals provided when working? If so, by who?

The nature of the sponsoring organization:

1. Who is the sponsoring organization? What business are they in? What is their purpose?
2. What is the relationship between the sponsoring organization and the third party?
3. What is the relationship between the sponsoring organization and the individual?

The nature of the controlling party:

1. Who is the controlling party? What business are they in?
2. Does the controlling party provide compensation to the sponsoring organization for work performed by individuals?
3. What is the relationship between the controlling party and the individual?
4. Does the controlling party supervise or direct the individuals' work activity? How?

APPENDIX A
JURISDICTION QUESTIONS
(continue)

The nature of the work performed:

1. What work is the individual doing?
2. Is there a supervisor from the sponsoring organization? Who?
3. Is there a supervisor from the controlling party? Who?
4. What benefit does the sponsoring organization or controlling party receive from the individual's work? Does the individual represent more of a benefit or a burden to the sponsoring organization? Why?

The duration of the work performed:

1. How long has the individual been performing this work or any other work for either the sponsoring organization or the controlling party?
2. Will the individual continue to be affiliated with either the sponsoring organization or the controlling party after this particular job is completed?

Miscellaneous questions:

1. Are there any written agreements between any of the parties (sponsoring organization and controlling party; sponsoring organization and individual; controlling party and individual)? Request copies!