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**Memorandum**

April 29, 2008

**TO:** Hon. Carolyn Maloney  
Attention: Anna Cielinski

**FROM:** Scott Szymendera  
Analyst in Disability Policy  
Domestic Social Policy Division

**SUBJECT:** Workers' Compensation Benefits for 9/11 Response Workers with Respiratory Conditions

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This memorandum is in response to your request for information on the possible issues surrounding the use of workers' compensation to provide benefits to persons with respiratory conditions that may have been caused or aggravated by their work in and around the World Trade Center site after the terrorist attacks of September 11, 2001. Included in this memorandum is an overview of workers' compensation policy, details on the New York workers' compensation system for 9/11 response workers, and a discussion of several challenges that the respiratory conditions claimed by 9/11 response workers present to the workers' compensation system.

For the purposes of this memorandum, all workers and volunteers engaged in rescue, recovery, reconstruction, or related work associated with the collapse of the World Trade Center buildings on September 11, 2001 will be referred to as "9/11 response workers." In addition, while 9/11 response workers may be facing a variety of injuries and illnesses resulting from their work, including disabilities resulting from traumatic injuries such as falls and psychological conditions such as post-traumatic stress disorder, this memorandum will only focus on respiratory conditions that may have been caused or aggravated by exposure to dust, debris, and other hazards that resulted from the collapse of the World Trade Center buildings. Disabilities caused by specific traumatic injuries are usually less problematic in terms of linking specific injuries to specific causes for the workers' compensation system than illnesses like the respiratory conditions claimed by many 9/11 response workers. Psychological conditions present their own unique set of challenges to workers' compensation and are beyond the scope of this memorandum.

There is also evidence that some residents of the New York metropolitan area may have developed illnesses and other conditions as a result of living in proximity to areas affected by the collapse of the World Trade Center buildings. However, issues surrounding whether or not these residents should receive some type of benefit and what the vehicle to provide

these benefits should be beyond the scope of this memorandum and will not be covered.

If you have any questions about the material presented in this memorandum or would like any additional information, please contact me by phone at x70014 or by email at [sszymendera@crs.loc.gov](mailto:sszymendera@crs.loc.gov).

## **An Overview of Workers' Compensation**

Nearly 97% of all private and public sector employees in the United States are covered by a workers' compensation system.<sup>1</sup> Employees not covered by workers' compensation are most often found in the domestic employment, agriculture, and non-profit sectors. Federal employees are covered by the Federal Employees Compensation Act (FECA), a Federal workers' compensation program. The Federal government also administers a smaller workers' compensation program for private-sector maritime workers. Most private-sector, state government, and local government employees are covered by the workers' compensation systems in the states in which they are employed.

While each workers' compensation system is different, all provide medical coverage and limited cash benefits to employees injured on the job or with illnesses related to their employment. Workers' compensation is a no-fault system that, with limited exceptions, pays benefits to injured and sick employees regardless of the circumstances of their injuries or illnesses.<sup>2</sup> In exchange for this no-fault protection offered at no cost to them, employees forfeit their rights to sue their employers for damages when they are injured on the job.

State workers' compensation programs differ in how they are administered. In some states, an exclusive state fund pays for all benefits while in other states, like New York, private insurance companies sell workers' compensation policies directly to employers. States also often allow large employers to self-insure. For most larger policies, the premiums paid by employers are based, in part, on experience rating. An increase in the number of claims in a given year can result in higher premiums in future years.

## **Brief History of Workers' Compensation in the United States**

Before the advent of modern workers' compensation systems, employees were required to bring individual civil actions against their employers for employment-related injuries and illnesses. Despite the high number and severity of industrial accidents and injuries at the time, employers had at their disposal a number of legal defenses that made winning compensation in these cases difficult for employees. These legal defenses included the defense of contributory negligence that mandated that if the worker was negligent or at fault in any degree, the employer was not liable. Additionally, employers were protected by the fellow-servant and assumption of risk defenses that prevented employer liability in cases in

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<sup>1</sup> Terry Thomason, Timothy P. Schmidle, and John F. Burton, Jr., *Workers' Compensation: Benefits, Costs, and Safety Under Alternative Insurance Arrangements*, (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research 2001).

<sup>2</sup> Common exceptions to coverage include injuries caused by the willful misconduct of an employee, the drug or alcohol use of an employee, or "acts of God."

which another worker was at fault or in which the employee knew of the hazardous nature of the workplace.

The first major workers' compensation law was adopted by New York state in 1910. Another ten states adopted workers' compensation policies in 1911 and the FECA program for Federal employees began in 1916. By 1920, 43 of the 48 states had adopted policies and by 1948, when Mississippi enacted its policy, every state in the nation had replaced the private tort system with a system of no-fault workers' compensation to insure against and compensate for losses caused by employment-related injuries.

## **When Injuries and Illnesses are Covered by Workers' Compensation**

The modern workers' compensation system is a no-fault system that pays workers for injuries or illnesses related to employment without considering the culpability of any one party. In exchange for this no-fault protection and the guarantee of benefits in the event of an employment-related injury or illness, workers give up their rights to bring actions against employers in the civil court system and give up their rights to seek damages for injuries and illnesses, including pain and suffering, outside of those provided by the workers' compensation laws. For this reason, workers' compensation is often referred to as the "exclusive remedy" for employees who are killed, injured, or become sick on the job.

Workers' compensation removed the majority of employment-related injury cases from the civil court system and rendered previous employer defenses moot. Workers' compensation uses a system of four tests to determine if an injury or illness is covered and if the economic consequences of that injury or illness are the responsibility of the employer.

**Personal Injury Test.** The first test is the personal injury test. This test requires that the injury or illness must have actually occurred to a specific person. Potential injuries, or injuries that could have occurred if not for some intervention, are not covered by workers' compensation.

**Accident Test.** The second test is the accident test. This test requires that the injury be the result of a specific event and for much of the history of workers' compensation has excluded illnesses developed through accumulated exposure to a dangerous workplace. In addition, this test requires that a specific employer or place of employment be named as the site of the incident which prevents many illness claims from proceeding since it is often difficult to determine the specific time and place of exposure or how exposure is shared among several employers. The enduring legacy of the accident test has contributed to the difficulties that the workers' compensation system has faced in providing benefits to persons with disabilities or death caused by exposure to asbestos, coal dust, or radioactive materials.

Because of the difficulties in linking specific respiratory conditions to exposure from the World Trade Center collapse, the respiratory conditions faced by 9/11 response workers present a challenge to the workers' compensation system. In addition, it is difficult for the medical community at this time to isolate a specific cause for some respiratory conditions faced by 9/11 response workers as these conditions and symptoms may have also been caused or aggravated by other exposure to hazardous materials, pollution, smoking, or other factors.

**Arising Out of Employment Test.** The third test is the “arising out of employment” test. This test requires that the source of the injury must be in some way related to the work done as part of employment. For example, if an employee’s neighbor, whom he has a personal disagreement with, follows him to work and shoots him at the job site, the employer is not liable under workers’ compensation law but may be liable under other laws and may be subject to a civil suit brought by the injured employee.

**Occurring During Employment Test.** The fourth test is the “occurring during employment” test. This test requires that the injury occur at the place of employment during working hours or at a location visited by the employee for work purposes. An injury that occurs on a business trip, for example, is covered, but one that occurs on a personal vacation is not. Taken together, the arising out of employment and occurring during employment tests are commonly referred to as requiring that injuries or illnesses occur “during the course of employment” in order to be covered by workers’ compensation.

For many 9/11 response workers, working at or around the site of the World Trade Center collapse or other sites in the New York area was part of their employment and would clearly meet the arising out of employment and occurring during employment tests. For example, firefighters and other first responders are expected, as part of their employment, to respond to major emergencies and are often expected to respond even when they are not officially on duty. Similarly, construction workers removing debris from the site were working within the normal scope of their employment. However, there may be cases in which individuals who volunteered at various sites were acting in a manner not consistent with their normal course or place of employment. For example, an office worker from a nearby building who voluntarily stayed in the affected area to assist with rescue efforts may be considered to have been working in a capacity outside of his or her employment at the time of his or her exposure.

## **Types of Benefits**

Once an injury or illness meets the legal tests for coverage under workers’ compensation, the employer, through the workers’ compensation system, is liable for the economic consequences of that injury to the worker. This liability is satisfied through the payment of several types of benefits depending on the condition of the injured worker and the provisions of the workers compensation laws. In addition to medical and cash benefits, workers’ compensation systems often provide vocational rehabilitation and opportunities for part-time or limited-duty work with the hope that these strategies will shorten the duration of a worker’s disability and reduce the amount paid on his or her claim.

**Medical Benefits.** The most common type of benefit paid in workers’ compensation cases is for medical expenses. These benefits are paid to the worker to reimburse him or her for costs associated with medical care arising from the injury or illness. Forty-five states, including New York, provide full medical benefits for covered injuries and illnesses with no monetary or time limits.

Workers’ compensation systems vary with regard to the selection of treating physicians. In 25 states, the worker is free to choose his or her own physician for medical treatment. In other states, employees are restricted to physicians on a list prepared by the state, or the employee must use a physician selected for them. In New York, workers may select a treating physician from a list approved by the state.

**Disability and Death Benefits.** All workers' compensation systems pay disability benefits to persons unable to work because of employment-related injuries or illnesses. The most common types of cash benefits provided by workers' compensation systems are temporary total disability (TTD) benefits. These benefits are paid to workers who are injured and unable to work, but whose impairments are expected to be only temporary. Permanent partial disability (PPD) benefits are paid in cases of injury in which there is a partial disability that is expected to last for the life of the worker. Permanent total disability (PTD) benefits are rare and are paid for injuries that render a worker totally unable to work for a period of time expected to last until his or her death or normal retirement age. Workers' compensation systems also pay survivors benefits to the surviving family members of a worker who dies on the job or as the result of an employment-related injury or illness.

**Types of Insurance Systems.** Workers' compensation laws vary on how private employers may meet their responsibilities to insure against the economic losses to employees from workplace injuries and illnesses. In five states, employers are required to purchase workers' compensation insurance coverage from a state fund. In 19 states including New York, employers may purchase workers' compensation insurance either through their state's fund or through a private carrier. In the remaining 26 states and the District of Columbia, no state fund exists and employers must purchase workers' compensation insurance from private carriers. In New York and most other states, individual employers are permitted to self-insure for workers' compensation and groups of employers may join together for the purpose of self-insuring.

## **Workers' Compensation for 9/11 Response Workers Under New York State Law**

Article 8-A of the New York Workers' Compensation Law provides that all non-uniformed city workers, private sector employees, and volunteers who participated in the rescue, recovery, or clean-up operations at the World Trade Center and other sites in the year after the terrorist attacks of September 11, 2001 are covered by the New York workers' compensation system for latent diseases and other injuries or deaths caused by exposure to hazardous materials.<sup>3</sup>

### **Covered Workers and Volunteers**

In order to be covered by Article 8-A, a person must have been involved in "rescue, recovery, or cleanup operations" at the World Trade Center site or have worked at one of three other covered sites in New York City. An employee must have worked at a covered site "within the course of employment" in order to be eligible for benefits.<sup>4</sup> Workers' compensation coverage is also extended to volunteers who worked at covered sites.

### **Covered Sites and Dates**

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<sup>3</sup> Uniformed employees of the New York City Police Department (NYPD), New York City Fire Department (FDNY), and New York City Department of Correction (DOC), as well as certain employees of the New York City Department of Sanitation (DSNY) and New York City Department of Education (DOE) are not eligible for workers' compensation benefits. Rather, these employees are eligible for line of duty injury (LODI) benefits administered by their agencies.

<sup>4</sup> N.Y. Workers' Comp. Law §§ 161(1) an 166.

Workers and volunteers are only covered under Article 8-A for activities at one of four covered sites in New York City. Workers and volunteers are covered by Article 8-A for their work in “rescue, recovery, and cleanup operations” at the World Trade Center site which is defined in the law as:

anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.<sup>5</sup>

Workers and volunteers are also covered by Article 8-A for any work performed at any of the following sites:

- the Fresh Kills Landfill in Staten Island;
- the New York City morgue or temporary morgue locations on piers on the west side of Manhattan; and
- the barges that operated between the west side of Manhattan and the Fresh Kills Landfill in Staten Island.

**Covered Dates.** Only work performed during the period between September 11, 2001 and September 12, 2002 at covered sites is covered by Article 8-A of the New York Workers’ Compensation Law.

## Qualifying Conditions

While any employment-related injury or illness can be covered under existing workers’ compensation law in New York, Article 8-A benefits can only be paid in the case of a “latent disease or condition resulting from hazardous exposure” at one of the covered sites.<sup>6</sup> Workers and volunteers with other types of injuries resulting from their work at sites related to the World Trade Center collapse are not eligible for benefits under Article 8-A and are subject to existing New York laws such as those limiting benefit applications to two years after an incident.

## Mandatory Registration

Under New York workers’ compensation law, injured workers generally only have two years from the date of an injury to apply for workers’ compensation benefits. However, Article 8-A of the New York Workers’ Compensation Law provides that workers and volunteers can apply for benefits related to their work at covered sites at any time provided that they register with the New York Workers’ Compensation Board before August 14, 2008.<sup>7</sup> Registration involves an employee swearing, under penalty of perjury, that he or she worked or volunteered at a covered site during the covered period.

Registration with the New York Workers’ Compensation Board is not an application for benefits and workers and volunteers can register even if they are not sick or injured. The

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<sup>5</sup> N.Y. Workers’ Comp. Law § 161(2).

<sup>6</sup> N.Y. Workers’ Comp. Law § 161(3).

<sup>7</sup> A copy of the registration form can be found on the website of the New York Workers’ Compensation Board at [<http://www.wcb.state.ny.us/content/main/forms/WTC-12.pdf>].

purpose of registration is to establish a list of persons who worked or volunteered at covered sites and thus may be eligible in the future for workers' compensation benefits under Article 8-A. Workers who had previously been denied workers' compensation benefits for activities at covered sites because they did not meet the normal two-year filing deadline are eligible to reapply for benefits if they register before the August 14, 2008 deadline.

## **Liability for Workers**

Employers and their insurance carriers are liable for any workers' compensation benefits due under Article 8-A to their eligible employees. The worker's employer at the time he or she worked at a covered site is liable for his or her injuries and the employer's insurance carrier on the date of "disablement" is liable for any insurance coverage.<sup>8</sup>

## **Liability for Volunteers**

The state of New York, using money from the Federal government, is liable for any workers' compensation benefits due to volunteers under Article 8-A. Specifically, benefits to volunteers are paid out of the New York Uninsured Employer's Fund (UEF), which usually pays benefits to injured workers whose employers lack insurance or the means to provide them workers' compensation benefits. The UEF is financed by an assessment charged to workers' compensation insurance carriers operating in New York and fines levied against firms that do not carry workers' compensation insurance.

Section 5011 of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 [P.L. 109-148] appropriated \$50 million to the Department of Labor to reimburse the UEF for workers' compensation benefits for volunteers under Article 8-A. Article 8-A authorizes workers' compensation benefits to volunteers:

only to the extent that funds are available out of funds appropriated to the United States Department of Labor under Public Law 109-148 to reimburse the uninsured employer's fund for the payment of such benefits.<sup>9</sup>

As a result of this provision in the New York Workers' Compensation Law and the one-time Federal appropriation provided by P.L. 109-148, the total pool of money available to volunteers is \$50 million and any use of additional money necessary to pay for workers' compensation benefits for volunteers would require a change in state law and a new source of funding. Because P.L. 109-148 is specifically mentioned in Article 8-A as the only authorized source of funding for volunteers, any additional appropriations by the Federal government would have to be accompanied by a change in state law before this money could be used to provide workers' compensation benefits to volunteers.

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<sup>8</sup> N.Y. Workers' Comp. Law §§ 42, 161(4), and 166.

<sup>9</sup> N.Y. Workers' Comp. Law § 167.

## **Workers' Compensation for 9/11 Response Workers: Possible Challenges<sup>10</sup>**

Workers' compensation has traditionally experienced difficulties providing coverage and protection for certain occupational illnesses. As a result, the Federal government now provides benefits for certain cases of coalworkers' pneumoconiosis (black lung disease) as well as cancer and other conditions caused by the occupational exposure to radiation and other hazardous materials. The inability of state workers' compensation systems to provide benefits for disabilities and deaths resulting from exposure to asbestos led to a series of lawsuits and legislation introduced in the 108<sup>th</sup> and 109<sup>th</sup> Congresses to provide some form of Federal benefits to persons with diseases caused by their occupational exposure to asbestos.<sup>11</sup>

The nature of the respiratory conditions claimed by 9/11 response workers, the chaotic nature of the terrorist attacks of September 11, 2001, the difficulties in determining the total area exposed to hazardous dust and debris, and the large number of persons who volunteered as part of the rescue, recovery, and clean-up efforts after the collapse of the World Trade Center buildings make the problem of providing coverage and benefits to 9/11 response workers a particularly vexing one for the workers' compensation system.

### **Respiratory Conditions Reported by 9/11 Response Workers**

There is evidence that some 9/11 response workers that may have been exposed to hazardous substances in the aftermath of the collapse of the World Trade Center buildings are experiencing a variety of health problems at a higher rate than what is usually found in the general population.<sup>12</sup> The Centers for Disease Control and Prevention, National Institute of Occupational Safety and Health (CDC/NIOSH) has established the following list of aerodigestive conditions for which 9/11 response workers are eligible for treatment under the World Trade Center Medical Monitoring and Treatment Program:

- interstitial lung diseases;
- chronic respiratory disorder-fumes/vapors;
- asthma;
- reactive airways dysfunction syndrome (RADS);
- World Trade Center-exacerbated chronic obstructive pulmonary disease (COPD);
- chronic cough syndrome;
- upper airway hyperreactivity;

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<sup>10</sup> This section deals in general terms with challenges that the respiratory conditions claimed by 9/11 response workers may present to workers' compensation and does not specifically deal with workers' compensation provided under Article 8-A of the New York Workers' Compensation Law.

<sup>11</sup> S. 1125 and S. 2290 in the 108<sup>th</sup> Congress and H.R. 1360 and S. 852 in the 109<sup>th</sup> Congress. These bills did not become law and no Federal asbestos benefit program was established.

<sup>12</sup> The Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (CDC/NIOSH) maintains an updated bibliography of scientific research on the health effects of exposure to hazardous materials and conditions at the World Trade Center site. This bibliography is available on the website of CDC/NIOSH at [<http://www.cdc.gov/niosh/topics/wtc/SciSumAllByYear.html>].



- chronic rhinosinusitis;
- chronic nasopharyngitis;
- chronic laryngitis;
- gastro-esophageal reflux disorder (GERD); and
- sleep apnea exacerbated by or related to any of the above conditions.<sup>13</sup>

The challenge for the workers' compensation system is to determine to what extent exposure to hazardous dust and debris from the collapse of the World Trade Center buildings caused or contributed to the respiratory conditions of 9/11 response workers. Because these conditions can also be found in the general population, it is difficult to determine their exact cause in any person and it may not be possible to solely assign exposure at the World Trade Center as the only cause of the conditions facing many 9/11 response workers. In addition, many of these conditions can be caused or exacerbated by smoking or exposure to other hazardous materials that can be found in air pollutants or at other construction or industrial sites at which a worker may have spent time. Generally, workers' compensation requires that an injury or illness occur during the course of employment in order to be covered, however, this standard has proven difficult to meet in many occupational illness cases and may be a difficult one to meet in the case of the respiratory conditions reported by 9/11 response workers.

In addition to the difficulties in determining the cause of the respiratory conditions reported by 9/11 response workers, the types of conditions are such that some affected persons may have not yet shown any symptoms and may not show any symptoms for some time into the future. This delayed onset of illness presents two challenges to the workers' compensation system. First, if 9/11 response workers who are not showing any symptoms do not register with the New York Workers' Compensation Board before the upcoming deadline they will be ineligible for benefits if they do become symptomatic in the future. Second, it is difficult to accurately predict how many 9/11 response workers will eventually receive workers compensation benefits and when these benefits will have to be paid. For volunteers covered under Article 8-A, the limited pool of money in the UEF could result in that fund being exhausted before some affected volunteers ever realize they are sick and possibly eligible for benefits.

## **The Areas and Persons Affected by the Collapse of the World Trade Center Buildings**

In a traditional workers' compensation case, there is a clearly defined area of work, such as an office or factory. However, the large area potentially impacted by airborne dust and debris caused by the collapse of the World Trade Center buildings presents a challenge to the workers' compensation system.

There is no clear definition of the geographic areas that may have been impacted by hazardous dust and debris from the collapse of the World Trade Center buildings. While Article 8-A identifies four affected sites, it does not include a variety of areas in which workers and volunteers may have been exposed to hazardous substances. Article 8-A, for example, includes no sites in New Jersey, even though on September 11, 2001, a fleet of

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<sup>13</sup> CDC/NIOSH also has established a list of qualifying mental health and musculoskeletal conditions. For additional information see the website of CDC/NIOSH at [<http://www.cdc.gov/niosh/topics/wtc/faq.html>].

commercial, private, and government-owned boats took many victims to the waterfront area of Jersey City and were then used to shuttle additional response workers and supplies back to lower Manhattan.<sup>14</sup> Similarly, areas in Manhattan that were used as staging areas for volunteers or information centers for affected families are not covered under Article 8-A, even though workers at these sites may have been exposed to hazardous substances when working with persons returning from lower Manhattan. Hospitals throughout New York and New Jersey that may have treated injured people covered with hazardous dust and debris are also not listed as covered sites.

The chaotic aftermath of the terrorist attacks of September 11, 2001, may make it difficult to ever truly identify the role played by every 9/11 response worker. While checkpoints and identification badging systems were eventually set up to control access to the area surrounding the World Trade Center collapse site, no such controls existed in the first hours after the attack. During this time, volunteers and other workers may have come and gone from the site without their presence or a description of their duties being officially recorded.

The case of New York City Police Officer Cesar Borja illustrates the difficulties that may be faced in accurately identifying who was actually working at sites affected by the collapse of the World Trade Center building. Borja died in 2007 of pulmonary fibrosis and his case received extensive media coverage. Initial reports were that Borja had responded to the World Trade Center site on September 11, 2001 and then worked on the pile of debris at the site. However, an investigation after Borja's death by *The New York Times*, which included a review of Borja's memo book and interviews with his family, could find no evidence that he left his post at an automobile impound area in Queens on September 11, 2001 or that he ever worked directly on the debris pile at the World Trade Center site. According to the available evidence, *The New York Times* concluded that Borja only worked for 17 days at traffic control posts in Lower Manhattan and did not work his first shift there until December 24, 2001.<sup>15</sup>

Despite the record-keeping resources of the police department, including log books, duty rosters, and overtime payroll records, there was still confusion over Borja's exact role as a 9/11 response worker. Given that most of the non-uniformed 9/11 response workers and volunteers will not likely have such detailed records of where they were each day after September 11, 2001, the workers' compensation system may face the challenge of identifying exactly who should qualify for coverage and benefits in the face of a lack of any evidence or conflicting evidence resulting from the chaotic nature of the response and recovery efforts.

## **Defining the “Course of Employment”**

Generally, workers' compensation only pays for injuries and illnesses that arise out of the course of employment and that occur at a designated work site. Injuries or deaths that are unrelated to a person's work may not be covered, even if they occurred at a place of employment during regular working hours. Even under Article 8-A of the New York

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<sup>14</sup> Since Article 8-A of the New York Workers' Compensation Law is a state law, it does not cover activities in New Jersey or other states. New Jersey has no similar program to compensate 9/11 response workers or volunteers outside of the state's normal workers' compensation system.

<sup>15</sup> Sewell Chan and Al Baker, “Weeks After a Death, Some Twists in 9/11 Details,” *The New York Times*, p. A1, February 13, 2007.

Workers' Compensation Law, employers and their insurance carriers are liable for the workers' compensation benefits of their covered employees only if their exposure to hazardous substances related to the collapse of the World Trade Center buildings occurred in the course of employment.

For many 9/11 response workers, it will likely be easy for the workers' compensation system to determine if the work they were doing was in the course of their employment and should be covered by their employers. Ironworkers who helped dismantle sections of the World Trade Center buildings, for example, would likely be covered by their employers under nearly any workers' compensation system. However, other workers who voluntarily worked in areas that put them into contact with hazardous dust and debris may have done so without the authorization of their employers and in a capacity unrelated to their normal employment.

The challenge to the workers' compensation system is to determine if the illnesses of these workers should be the liability of their employers or if they should be classified as volunteers, even though they may have otherwise been covered by an existing workers' compensation system. For persons exposed at a site covered by Article 8-A, this may not make a significant difference as even volunteers are eligible for compensation. However, the pool of money to pay compensation to volunteers under Article 8-A is currently capped. Volunteers exposed at sites not covered by Article 8-A may not qualify for any benefits and might be better off if they could make the case that their work was related to their employment and thus the responsibility of their employers. However, employers and their insurance carriers may argue that they should not be held responsible for injuries or illnesses that occurred to an employee outside of the course of employment that could not reasonably have been predicted.