



2009 Legislative Changes to Liability for Good Samaritans

DISCLAIMER: This document is informational only and is NOT intended to serve as legal counsel or advice. The California Emergency Management Agency encourages you to check with your legal counsel to determine how these laws affect you and your organizations.

In August 2009, the California Legislature passed two bills, which Governor Schwarzenegger signed into law, that address volunteer and Good Samaritan liability. These bills were a response to a recent California Supreme Court case, *Van Horn v. Watson* (2008) 45 Cal.4th 322. The two bills to address *Van Horn* went into effect August 6, 2009.

In the *Van Horn* case, Van Horn was the front seat passenger in a vehicle that was involved in a single car accident. Torti, who was riding in another vehicle, stopped and removed Van Horn from the wreckage prior to the arrival of emergency response personnel. Van Horn sued Torti, alleging that Torti negligently caused permanent damage to Van Horn's spinal cord and rendered her a paraplegic. Torti obtained summary judgment in the trial court under California's so-called Good Samaritan law, Health and Safety Code section 1799.102. On appeal however, the California Supreme Court adopted a narrow interpretation of this code section and held that the protections afforded by California's Good Samaritan law only applied to medical assistance because, among other reasons, the Legislature deliberately placed it in the Health and Safety Code and not another section, such as the Civil Code. Many were concerned that *Van Horn* would deter the public from providing non-medical assistance during an emergency out of concern for potential liability.

After the Supreme Court's *Van Horn* decision, and prior to Governor Swarzenegger's signature on Assembly Bill 83 and Senate Bill 39, volunteers or other laypersons that provided non-medical assistance during an emergency were limited to the protections provided under the common law. Under the common law, a person has no duty to come to the aid of another, but if he or she does, they must act with "reasonable care." If the rescuer takes actions in response to an emergency that are "unreasonable" and, because of those actions, caused additional injuries or death, the rescuer is liable.

Assembly Bill 83, by Assemblymember Feuer, amends Health and Safety Code section 1799.102, which was at issue in *Van Horn*. The law now protects individuals who provide medical *or non-medical* emergency assistance. This protection is not unlimited, as a volunteer rescuer could be found liable for acts or omission at the scene of an emergency if it constitutes “gross negligence or willful or wanton misconduct.” This means that a person who comes to the aid of others without expectation of compensation are not liable for any damages unless they act “so unreasonably and dangerously that he or she knows or should know it is highly probably that harm will result.”

This bill does not change the various liability protections provided to professionals, such as nurses and engineers, who provide emergency aid outside of their normal employment.

Senate Bill 39, by Senator Benoit, amends a portion of the Civil Code, section 1714.5, which addresses liability protections for disaster service workers. This law provides no disaster service worker who is acting within the scope of the disaster service worker’s assigned responsibilities during an emergency shall be liable for civil damages on account of personal injury to or death of any person or damage to property resulting from any act or omission while performing disaster services anywhere within any jurisdiction covered by such emergency, unless the actions or omissions are determined to be willful. [This bill does not address the separate protections provided to appropriately registered volunteer disaster service workers or their employing agencies provided by Government Code 8657.]

The term “gross negligence” has been interpreted by our courts to describe “an extreme departure from the ordinary standard of conduct.” (See, e.g., *Eastburn v. Regional Fire Protection Authority*, *supra*, 31 Cal.4th 1175; *City of Santa Barbara v. Superior Court*, *supra*, 41 Cal.4th 747). Similarly, “willful or wanton misconduct” describes conduct by a person “who may have no intent to cause harm, but who intentionally performs an act so unreasonable and dangerous that he or she knows or should know it is highly probable that harm will result.” (*Donnelly v. Southern Pacific Co.*, *supra*, 18 Cal.2d 863; *City of Santa Barbara v. Superior Court*, *supra*, 41 Cal.4th 747).

For more information regarding disaster service workers and emergencies see [Disaster Service Worker Volunteer Program \(DSWVP\) Guidance](#), or on volunteerism, see [California Volunteers](#).