

Liability of Local Government Employees
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ISSUE: What legal provisions exist to protect a local government employee from lawsuits by people physically or financially injured by attempts to respond to an emergency?

ANSWER: Though no one law protects all responders in all circumstances, there are laws that cumulatively and individually provide coverage. They are summarized in a document on the DSHS Public Health Preparedness Legal Resources web page: <http://www.dshs.state.tx.us/comprep/ogc/default.shtm>. Keep in mind:

- This document or others provided to the public are not a substitute for legal advice. The summaries may omit provisions or exceptions that are relevant to your situation. You should consult a lawyer if you have any questions.
- The statutes often have exceptions and may not protect for behavior that is “willful misconduct”, “gross negligence”, “criminal” or violations of civil rights.
- The laws below protect individuals, not governmental or private entities. Laws to protect entities are not covered here.

DISCUSSION:

Local Government Employees. Local employees may be protected under the Texas Civil Practice and Remedies Code, Chapter 102. It provides for indemnification (local government pays the damages for you) of the employee similar to that provided for state employees, but local government is given an option rather than a mandate for this coverage. Employees should check the policies of their local government employer. Provisions in state law make it much more likely that the governmental entity will be sued instead of the employee (Civil Practice and Remedies Code Chapters 102, 108).

Other provisions protect employees and volunteers engaged in “homeland security activities”. These activities are defined broadly to include a “terrorist attack, natural or man made disaster...or extraordinary law enforcement emergency” (Government Code §§421.061, 421.001). When engaged in these activities, the employees are considered to be members of the state military forces for purposes of civil liability.

Unlicensed (in the “healing arts”) local government employees acting as emergency medical personnel and other local government employees who do not expect remuneration for emergency care may be protected under provisions of the Texas “Good Samaritan” law (Civil Practice and Remedies Code §74.151 - 74.152)