

**J. MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF DEFENSE STATUS OF CERTAIN AMERICAN RED CROSS VOLUNTEERS**

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**A. Purpose**

The purpose of this Memorandum of Understanding is to describe the circumstances in which a volunteer of the American Red Cross gratuitously supporting government personnel in the delivery of services to members and beneficiaries of the armed forces will be considered to be an employee of the United States government for the purposes of the Federal Tort Claims Act.

**B. Background**

1. Under the Federal Tort Claims Act, 28 U.S.C. Chapter 171, agents and employees of the United States are, subject to certain exceptions, immune from personal liability for common law torts committed within the scope of their employment; the sole remedy for an injured party in such cases is against the United States government. Among those covered by this law are persons serving without compensation who are acting in behalf of the United States in an official capacity.
2. The American Red Cross has a unique and indispensable role in providing and supporting health, welfare and social services for the armed forces. (On September 25, 1990, the Assistant Attorney General, Civil Division, described this role in testimony before the Subcommittee on Administrative Law and Governmental Operations of the House Judiciary Committee). Among these services are numerous Red Cross functions conducted under the direction and control of the Red Cross. Matters regarding tort liability for paid and unpaid personnel of the Red Cross engaged in these Red Cross functions are responsibilities of the Red Cross; for all purposes, including tort liability, these personnel are not, under 10 U.S.C. 2602(e), employees of the United States. Separate from these activities, many Red Cross volunteers provide gratuitous support to government personnel in delivering services to armed forces personnel and beneficiaries. Under proper conditions, outlined below, Red Cross volunteers in this latter category are considered employees of the United States for the purposes of the Federal Tort Claims Act.

**C. Agreement**

For the purposes of the Federal Tort Claim Act, any Red Cross volunteer will be certified as an employee of the United States, within the meaning of 28 U.S.C. 2679, by the Attorney General (and will also be entitled to representation by the

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Department of Justice under the terms of 28 C.F.R. 50.15) upon a determination by the Attorney General that the following conditions are met:

1. The Secretary of Defense or Secretary of the Military Department concerned has authorized the acceptance of gratuitous services supporting an established function of the agency concerned.
2. Such authorization, which may not include policy making activities, is made a part of agency regulations specifying the agency functions supported and requiring day-to-day supervision and control by agency personnel of the volunteers' activities in a manner comparable to the supervision and control exercised over agency personnel (who are not volunteers) engaged in comparable activities.
3. The volunteer is not receiving compensation for the subject services from any agency of the United States, the Red Cross or any other entity.
4. The tort liability asserted arises from acts or omissions within the scope of the agency authorization under which the volunteer is serving.

**D. Administration**

1. This Memorandum of Understanding shall remain in effect until termination by written notice by either party.
2. The American Red Cross shall be notified of any revision or termination of this Memorandum.

**For the Department of Justice:**

Dated: November 20, 1990

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Stuart M. Gerson, Assistant Attorney General  
(Civil Division)

**For the Department of Defense:**

Dated: November 20, 1990

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Terrence O'Donnell, General Counsel

**Acknowledged for the American Red Cross:**

Dated: November 20, 1990

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Karen S. Lipton, General Counsel