



"Hot Topics"

by Beck & Poorman, LLC

NOTE:

Information provided in this document is meant to be a general survey of the law and reflect current opinions on general matters only. It should not be relied on to aid in specific legal disputes without further legal consultation.

VOLUNTEER COMPENSATION

SUMMARY OF THE UNITED STATES DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION'S AUGUST 2006 OPINION LETTER REGARDING COMPENSATION FOR VOLUNTEER FIREFIGHTERS.

On August 7th, 2006, the United States Department of Labor released a Wage and Hour Division opinion letter that helped clarify what constitutes nominal compensation. Although far from establishing a bright line standard, the opinion does answer some important questions regarding volunteer compensation.

The Division addressed a number of questions posed to it by the International Association of Fire Chiefs. The IAFC listed several factual scenarios on how various departments compensate volunteers, and asked the Division for a determination as to whether the compensation was 'nominal', so that the volunteers would not be considered employees and thereby lose their volunteer status. You can look at each of the factual scenarios in the opinion letter that is attached, but the answer was generally the same for each scenario. Below is an outline of important factors to consider:

I. WHAT IS A "VOLUNTEER"?

A. Performs hours of service for a public agency for civic, charitable or humanitarian reasons, *without promise, expectation or receipt of compensation for services rendered.*

Although a volunteer can't receive regular compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee, or a combination thereof; *and*

B. Offers services *freely and without pressure or coercion*, direct or implied, from an employer; *and*

C. Is not otherwise employed by the *same public agency* to perform the *same type of services* as those for which the individual proposes to volunteer.

WHY DO WE CARE? If person is determined to not be a volunteer, then will be considered an employee who is then covered by FLSA minimum wage and overtime provisions.

II. WHAT EXPENSES AND BENEFITS MAY BE PAID TO A VOLUNTEER?

Reimbursement or a stipend for:

- A. UNIFORMS,
- B. DRY CLEANING,
- C. TRANSPORTATION,
- D. SUPPLIES AND MATERIALS' and
- E. BENEFITS (Such as Group Insurance Plans)

III. WHAT CONSTITUTES A NOMINAL FEE?

- A. NO GUIDANCE ON SPECIFIC DOLLAR AMOUNTS
- B. DEPENDS ON THE "ECONOMIC REALITIES" OF EACH SITUATION:

1. Examine the *total amount of payments* in the context of the economic realities of a particular situation.

2. A willingness to volunteer for 20 percent of the prevailing wage for the job is a likely indication of the spirit of volunteerism.

The letter responded to a number of specific instances of volunteer compensation:

- 1. V paid \$1,200 per year regardless of the number of shifts or time;
- 2. V paid \$100 per month regardless of the number of shifts or time;

3. V paid \$100/mo. minimum of 2 shifts or 5 hrs per month, additional compensation available for additional shifts and time spent responding over shifts and time caps.
4. V is paid \$25 for each four hour block of time spent at the station;
5. V is paid \$20 shift regardless of length of time spent;
6. V is paid \$25. for 8 hr shift and 2.5 hrs responding to calls; + \$15. per shift for if shift exceeds 8 hrs or more than 5 hrs spent responding.

The Division found that in each scenario, the compensation that was paid was nominal. However, the Division did state that they looked at the average number of hours spent performing the duties, and the average pay received.

The Division stated in the Letter:

"Generally, an amount not exceeding 20% of the total compensation that the employer would pay to employ a full-time firefighter for performing comparable services would be deemed nominal."

CAUTION: Although the Division does look at the total average hours worked by a volunteer, and the total compensation paid, they do make it clear that volunteer compensation should not be expressed as hourly pay. This is because payments can't be considered nominal if they are tied to productivity. However, the FLSA states specifically that payments can be tied to a "per call" or "per shift" basis, or other similar basis.

CAUTION: If you pay your volunteer too much compensation over the course of a year, then, even though the compensation paid may be within the 20% rule, the total compensation paid may look more like compensation for a full time job under the economic realities test, rather than a "nominal fee" for volunteering. (Ex. V paid \$15,000. for being available to provide 3,000 hours annually).