
CHAPTER 2.

PAYMENTS TO VOLUNTEERS

In accordance with DOL regulations, public employers may pay volunteers expenses, reasonable benefits, a nominal fee, or any combination thereof, without jeopardizing their volunteer status.³ Public employers must be careful, however, to not exceed these permissible payments to volunteers. If payments to volunteers rise to the level of “compensation” for services rendered, the individual will no longer qualify as a *bona fide* volunteer, but will be deemed an employee for purposes of FLSA minimum wage and overtime liability. Ultimately, DOL will evaluate “the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation” to determine whether the individual loses volunteer status by virtue of payments made by the public agency.⁴

EXPENSES

Public employers can reimburse volunteers for approximate, out-of-pocket expenses incurred by volunteers incidental to providing services for the public agency,⁵ which include the following:

- Meals
- Transportation
- Uniforms and Related Equipment
- Tuition and Other Costs Involved in Attending Classes Related to Volunteer Services
- Books, Supplies or Other Materials for Training

REASONABLE BENEFITS

A public employer does not risk the status of volunteers by providing reasonable benefits to volunteers,⁶ including:

- Liability Insurance
- Health Insurance
- Life Insurance
- Disability Insurance
- Workers' Compensation
- Pension Plans
- Length of Service Awards
- Personal Property Tax Relief⁷

NOMINAL FEE

Although public employers can pay a nominal fee to volunteers, the fee must not be a substitute for wages and must not be tied to productivity.⁸ Public employers who compensate volunteers with more than a nominal fee likely will create an employment relationship, thereby destroying the volunteer status of the individuals. DOL has indicated that fire departments may consider the following factors when providing nominal fees to *bona fide* volunteers:

- Distance traveled
- Time and effort expended
- Whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods
- Whether the volunteer provides services as needed or throughout the year⁹

In addition, DOL provided the following additional guidance in various opinion letters:

- **Per Call Basis** – Although generally the amount of a nominal fee may not be tied to productivity and may not vary based on time spent on the activity, DOL's regulations specify that the payment of a nominal amount on a per-call basis to volunteer firefighters is acceptable. In its most recent letter, DOL noted that "compensation 'per call' or other similar bases may be acceptable so long as they may fairly be characterized as tied to the volunteer's sacrifice rather than productivity-based compensation."¹⁰
- **Monthly or Annual Stipend** – DOL has stated that the payment of a nominal monthly or annual stipend to an individual who volunteers on a year-round basis is allowed.¹¹
- **Hourly Rate** – DOL has determined that payment to volunteer firefighters on a per hour basis destroys *bona fide* volunteer status and creates an employment relationship. This type of payment is akin to hourly wages based on productivity.¹²

THE 20 PERCENT RULE

In the August 7, 2006 opinion letter, DOL finally provided definitive clarification as to what amounts will qualify as a nominal fee. IAFC sought this opinion letter to elicit a bright-line test to assist fire departments in defining the line between what constitutes a nominal fee to volunteers and what amounts to compensation.

In its November 10, 2005 opinion letter, DOL stated that a public school employee could receive a nominal fee to volunteer as a coach or advisor for extracurricular activities so long as the fee does not exceed 20 percent of what the public school would otherwise pay to hire a full-time coach or advisor.¹³

Extending application of the 20 percent rule to volunteer firefighters, in the August 7, 2006 opinion letter, DOL explained that "generally, **an amount not exceeding 20 percent** of the total compensation that the employer would pay to a full-time firefighter for performing comparable services **would be deemed nominal.**"¹⁴ Further, DOL indicated that – so long as the fee is 20 percent or less of total compensation for comparable services – DOL will be less likely to focus on whether the fee is paid on an annual, monthly or daily basis.

Fire departments can apply the 20 percent rule to evaluate whether a fee paid to a volunteer firefighters is a nominal amount based on market information, including:

- Compensation paid to a full-time firefighter on the fire department's payroll
- Information from neighboring jurisdictions, the state or the nation
(including data from DOL's Bureau of Labor Statistics, www.bls.gov)

DOL did not clarify whether fire departments must use the compensation for a specified level of firefighter (for example, entry level or advanced) when calculating fees based on the 20 percent rule. DOL explained that the information necessary to make this calculation generally is within the knowledge and control of fire departments, and thus, the actual determination should be made by fire departments in good faith based on "[a]ny full-time firefighter a particular fire department has on its payroll." Although DOL's guidance on this issue is unclear, it is possible that fire departments may vary the level of the firefighter used as the benchmark for the 20 percent rule to correspond to the level of the volunteer firefighter receiving the fee. For example, a fire department may use

CHAPTER 2. *continued*

the salary paid to a full-time beginner firefighter as a benchmark to determine whether a fee paid to a volunteer firefighter for his first year of service is nominal.

Under the 20 percent rule, for example, if a volunteer firefighter staffs four shifts during a month, a nominal fee should not exceed 20 percent of what it would cost to employ a full-time firefighter to staff the equivalent of four shifts.

EXAMPLES:

A county fire department pays \$50,000 to hire a full-time firefighter for one year. The fire department pays an annual stipend of \$9,500 to a volunteer firefighter to perform the same services. This payment would constitute a nominal fee under the 20 percent rule.

A county fire department pays \$50,000 to hire a full-time firefighter for one year. The fire department pays an annual stipend of \$15,000 and life insurance to a volunteer firefighter to perform the same services. This payment would not constitute a nominal fee under the 20 percent rule.

Responding to a series of hypotheticals posed by IAFC, DOL found that the following payments may qualify as nominal fees:

AMOUNT OF PAYMENT	REQUIREMENTS	ADDITIONAL PAYMENTS	AVERAGE WORKED (MINIMUM)
1) \$1,200 per year	Regardless of number of shifts or amount of time spent responding to calls	n/a	24 shifts and/or 60 hours responding to calls per year
2) \$100 per month	Regardless of number of shifts or amount of time spent responding to calls	n/a	4 shifts and/or 8 hours responding to calls per month
3) \$100 per month	Minimum of 2 shifts and/or 5 hours responding to calls	\$25 for each additional shift over 4 and/or each additional 2.5 hours responding to calls over 12 hours	n/a
4) \$25 per 4-hour block of time	Regardless of the amount of time spent at the station house or responding to calls	n/a	n/a
5) \$20 per shift	Regardless of the length of shift or amount of time spent responding to calls	n/a	6 hour shift and/or 2 hours responding to calls per shift
6) \$25	Minimum of 8 hours per shift and/or 2.5 hours responding to calls	\$15 per shift that exceeds 8 hours and/or 5 or more hours responding to calls	n/a
7) \$15,000 annual fee	n/a	n/a	3,000 hours waiting and responding to calls per year*
8) \$20 per shift	Regardless of the length of shift or amount of time spent responding to calls	Fee increases by \$1 per shift for each year with a minimum of 12 shifts**	n/a

* Although DOL found that a \$15,000 annual payment may qualify as nominal under the 20 percent rule, DOL also observed that "it is unlikely that 3,000 hours of service (50+ hours per week) is 'volunteering' rather than employment."¹⁵ If a volunteer is compensated annually for a comparable, high level of hours, DOL likely will determine that a full-time employment relationship exists.

** DOL reminded public employers that a nominal fee must not vary depending on the productivity of the volunteer or the amount of time spent on volunteer activities. Although it did not definitively answer whether a fire department can increase the yearly, monthly or per shift payment to volunteers for every year the volunteer staffs a requisite number of shifts, DOL noted that this may constitute impermissible "compensation via a seniority or productivity system based on services rendered."¹⁶

Fire departments should use the 20 percent rule to determine if a payment to volunteer firefighters constitutes a nominal fee. Remember that the 20 percent rule does not apply to expenses and reasonable benefits. Even if a payment constitutes a nominal fee under the 20 percent rule, however, this payment must be considered in totality with other expenses or benefits received by volunteer firefighters to determine if the entire amount of payments precludes volunteer status under the "economic realities" test.

EXAMPLE:

A volunteer firefighter receives an annual stipend of \$8,000, reimbursement for the cost of transportation, uniforms and training, and payments by the fire department for health and life insurance. The fire department should determine whether the \$8,000 stipend exceeds 20 percent of what it would cost to employ a full-time firefighter to perform the same services. The fire department does not have to evaluate whether the reimbursement of expenses or provision of insurance benefits are 20 percent of the amount of expenses and insurance received by full-time firefighters performing similar services.

CONCLUSION: TOTAL PAYMENTS

Step 1: Evaluate whether each specific payment to volunteers qualify as either (1) expenses; (2) reasonable benefit; or (2) a nominal fee.

Step 2: The nominal fee cannot exceed the total compensation paid to a full-time firefighter for performing comparable services.

Step 3: Analyze the entire package of payments made to volunteers "in the context of the economic realities of the particular situation" to determine whether furnishing these payments results in loss of volunteer status.

¹ 29 C.F.R. § 553.104(a) (2006). ⁴ Id. at § 553.106(f). ⁵ Id. at § 553.106(b)-(c). ⁶ Id. at § 553.106(d). ⁷ DOL has found that provision of personal property tax relief in the amount of \$1,500 annually during the term of volunteer service constitutes a permissible reasonable benefit. DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006). ⁸ 29 C.F.R. § 553.106(e) (2006). ⁹ Id. ¹⁰ DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006). ¹¹ Id. ¹² DOL, Wage and Hour Division Opinion Letter (July 7, 1999). ¹³ DOL, Wage and Hour Division Opinion Letter (Nov. 10, 2005). ¹⁴ DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006). ¹⁵ Id. ¹⁶ Id.