



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2007-3NA

September 17, 2007

Dear **Name***:

This is in response to your request for an opinion regarding the application of the Fair Labor Standards Act (FLSA) to volunteer drivers and firefighters. Your client, a City with a volunteer Fire Department, seeks assurance that certain payments made to the volunteers do not jeopardize their volunteer status under the FLSA.

You state that individuals may volunteer as drivers or firefighters for the City's volunteer Fire Department. The City provides the following payments to the volunteers:

1. Tuition to attend the Fire Academy to become a certified firefighter;
2. Tuition to attend a two-week refresher training course that is held every three years at a Fire School;
3. \$550 to reimburse a volunteer for income lost from regular employment for taking time off to attend the two-week refresher training course;
4. Life insurance and disability policy;
5. Contribution of \$100 per month to a state-created retirement fund;
6. A stipend of \$150 per 12-hour shift for volunteer drivers; and
7. A stipend of \$19.72 per call for volunteer firefighters who respond to calls.

The FLSA recognizes the generosity and public benefits of volunteering and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. The Department of Labor is committed to ensuring that individuals are able to volunteer their services freely for charitable and public purposes within the legal constraints established by Congress.

In enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities were neither impeded nor discouraged. Congress was explicit in its 1985 Amendments that a "volunteer" may receive "no compensation," but may be paid "expenses, reasonable benefits, or a nominal fee." 29 U.S.C. § 203(e)(4)(A); *see also* 29 C.F.R. § 553.106(a) ("Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers."); 29 C.F.R. § 553.106(e) ("Individuals do not lose their volunteer status if they receive a nominal fee from

a public agency.”).¹ Neither the FLSA nor the Senate Committee Report to the 1985 Amendments further defines the term “nominal fee.” Rather, the Committee Report directed the Department to issue regulations providing guidance in this area. Employees of a public agency are permitted to provide volunteer services in certain circumstances, and the FLSA regulations governing this issue are found at 29 C.F.R. §§ 553.100-.106.

Under section 3(e)(4)(A) of the FLSA and 29 C.F.R. §§ 553.101 and 553.103, individuals are volunteers, not employees of a public agency, when they meet the following criteria:

- A. They provide their services for civic, charitable, or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered, although a volunteer can be paid expenses, reasonable benefits, or a nominal fee to perform such services;
- B. They offer their services freely and without coercion, direct or implied, from the employer; and
- C. They are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer; in other words, individuals can qualify as volunteers if they either volunteer for different agencies *or* perform services different from those they are otherwise employed to perform.

See 29 C.F.R. §§ 553.100-.106 for a full discussion of the volunteer standards.

In order to determine whether the individuals in question may perform volunteer duties for the City, we assume for discussion purposes that the individuals perform their duties for civic, charitable, or humanitarian reasons, offer their services freely, without pressure or coercion, direct or implied, from the City, and that the individuals are not otherwise employed by the City to perform similar driving or firefighting services. For the volunteer arrangement to meet the criteria above, we must then determine whether the payment of certain expenses, benefits, and stipends provided to the volunteers constitute “expenses, reasonable benefits, or a nominal fee” under FLSA section 3(e)(4)(A)(i) as implemented by 29 C.F.R. § 553.106.

Tuition for Fire Academy and Fire School

As mentioned above, the City pays tuition for these individuals to attend the Fire Academy to become certified firefighters. The City also pays tuition to cover the two-week refresher training course that is held every three years at a Fire School. As indicated in 29 C.F.R. § 553.106(c), “[i]ndividuals do not lose their status as volunteers because they are reimbursed for tuition . . . costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers.” After reviewing the information provided, we conclude that the payment of tuition to attend the Fire Academy and Fire School is an allowable payment for expenses as discussed in section 553.106(c).

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

Benefits

As noted above, the City provides life insurance, a disability policy, and a monthly contribution of \$100 to the state-created retirement fund for volunteer drivers and firefighters. This state-created retirement fund is available for cities within the state that utilize volunteer firefighters.

As discussed in section 553.106(d),

[i]ndividuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as . . . life [or] disability . . .) or pension plans . . . commonly or traditionally provided to volunteers of State and local government agencies.

Based on a review of the information provided, we conclude that the City's provision of the benefits described above is reasonable and consistent with volunteer status under section 553.106(d).

Stipends

The City reimburses volunteer firefighters \$550 for income lost from regular employment for taking time off to attend the two-week refresher training course at a Fire School. As you have explained the facts, the purpose of this payment is specifically to compensate the firefighters for their lost days of paid work. Thus, the payment would appear to fail the threshold issue of volunteerism because the firefighters would be receiving compensation for their services rendered. *See* 29 U.S.C. § 203(e)(4)(A); 29 C.F.R. § 553.101(a) (A volunteer must perform "hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered."). Accordingly, this payment as described would likely create an employment relationship under the FLSA. In the event, however, the proposed payment could be characterized as a reasonable reimbursement for transportation, meal expenses, or other costs incurred by the volunteer, or a combination of expense reimbursement and a nominal fee (as discussed more fully below), the payment would be allowable, assuming it approximates the costs incurred and meets the requirements for a nominal fee. *See* 29 C.F.R. § 553.106(c) (noting that among others, transportation and meal costs can be reimbursed) and § 553.106(e) (allowing a nominal fee for volunteers).

The City also provides volunteer drivers a stipend of \$150 per 12-hour shift. The driver position requires the volunteer to remain at the station and to drive the fire engine to the scene of all calls that come in during the shift. Moreover, the City provides volunteer firefighters a stipend of \$19.72 per call. The per call stipend is intended to cover the volunteers' costs of gasoline, wear and tear on their personal vehicles, meals while at the station, and uniform cleaning and laundering.

As noted above, the regulations allow volunteers to be paid “expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.” 29 C.F.R. § 553.106(a). With regard to expenses, the regulations recognize that an individual “does not become an employee because he or she receives a uniform allowance, or reimbursement for reasonable cleaning expenses or for wear and tear on personal clothing worn while performing hours of volunteer service.” 29 C.F.R. § 553.106(b). Similarly, an individual may be “reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.” *Id.*

Although the statute and the implementing regulations do not define what constitutes a “nominal fee,” the regulations provide guidance for determining whether a fee is nominal and permissible. If a fee is not nominal, then the individual does not qualify as a volunteer and is considered an employee who may be covered by the FLSA minimum wage and overtime provisions. The factors to examine in determining whether an amount is nominal include without limitation: (1) the distance traveled and the time or effort required of a volunteer; (2) the availability, limited or unlimited, of a volunteer to provide services; and (3) the basis, as needed or throughout the year, on which a volunteer agrees to perform services. *See* 29 C.F.R. § 553.106(e). These factors focus on whether the fee is akin to a payment for services. Thus, to the extent that payments are tied to productivity (*e.g.*, payment of hourly wages for services rendered), are similar to “piece rates,” or are comparable to “production bonuses,” there is a greater likelihood that such fees are not nominal. As noted in the preamble to the 1987 amendments to 29 C.F.R. Part 553, however, almost 30 percent of all volunteer firefighters were paid a small fee for each fire call to which they respond, and the rule was not intended to invalidate such payments. *See* 52 Fed. Reg. 2012, 2021 (Jan. 16, 1987) (copy enclosed). Moreover, consistent with the discussion of factors to be considered (*e.g.*, distance traveled, time and effort expended, around-the-clock versus limited availability, throughout the year versus upon request), payment per call or other similar bases may be acceptable as long as they may fairly be characterized as tied to the volunteer’s sacrifice rather than productivity-based compensation. Accordingly, nothing in the statutory language precludes the payment of nominal per-call or even per-shift fees to volunteer firefighters, and indeed section 553.106(e) specifically provides that a nominal fee can be paid on a “per call” or similar basis for volunteer firefighters.

Wage and Hour Opinion Letter [FLSA2005-51](#) contains a discussion of what constitutes a nominal fee for determining an individual’s volunteer status. That opinion letter discusses the “economic realities” test in the context of school systems and those volunteering by assisting with activities, such as coaching sports or sponsoring various clubs. Specifically, that letter states that when a public agency employee volunteers as a coach or extracurricular advisor, the Department will presume the fee paid is nominal as long as it does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time coach or advisor for the same services. This 20 percent rule is derived from the FLSA and its implementing regulations. *See* Wage and Hour Opinion Letter FLSA2005-51 (The FLSA uses a 20 percent test to assess whether something is insubstantial with regard to prohibited driving on public roadways by employees who are 17 years of age.). A willingness to volunteer for 20 percent of the prevailing wage for the job is also a likely indication of the spirit of volunteerism contemplated

by the 1985 amendments to the FLSA. This interpretation of “nominal fee” applies equally in the context of firefighters. *See* Wage and Hour Opinion Letter FLSA2006-28 (Aug. 7, 2006).

With regard to your specific situation, the Department is unable to answer whether stipends of \$150 per 12-hour shift for drivers and \$19.72 per call for firefighters can be considered nominal due to the limited information provided concerning what the City would otherwise pay to hire a full-time driver or firefighter for the same services and what the individual’s out-of-pocket expenses are. However, the market information necessary to complete this good faith determination is generally within the City’s knowledge and control. Thus, any driver or firefighter the City has on its payroll would be a good benchmark for this calculation. Absent such information, the City may look to information from neighboring jurisdictions, the state, or, ultimately, the nation, including data from the Department of Labor’s Bureau of Labor Statistics. So long as the City’s calculations are based on an approximation of the prevailing wages of a driver or firefighter within its area and the fee amount does not exceed 20 percent of that driver or firefighter’s wages for the same services, the Department would find that such a fee would be nominal within the meaning of 29 C.F.R. § 553.106. Moreover, in evaluating whether a fee is nominal, the City should consider that, in addition to paying a nominal fee, as noted above the City may reimburse an individual for the approximate out-of-pocket expenses incurred.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Barbara R. Relford
Fair Labor Standards Team
Office of Enforcement Policy

Enclosure:

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**