Volunteer Staffing Issues and Incentive Programs

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Disclaimer

- The information contained in this presentation is not intended and should not be construed as legal advice or direction.
- The consultant plans to share knowledge and practical experience with the attendees.
- The consultant does not provide legal advice and strongly advises attendees to seek professional legal advice from an attorney before implementing any material change in their operational policies, procedures or any other matter which is governed by law or regulation.

Volunteer Issues

- Most services indicate that personnel issues are their #1 problem but......
  - Most services do not have comprehensive Recruitment and Retention Programs
  - Have many serious management and organizational issues which negatively impact volunteer/staff morale and longevity!

Introduction

- In most cases, reimbursing volunteers for expenses and implementation of a properly structured VIP program CAN HELP...

But ....

- Typically these programs will not completely solve the staffing problems that plague many emergency service organizations
- Do not expect dramatic results!

Why do People Volunteer?

- “I want to help others”
- “I want to give back to my community”
- “Brotherhood” – “Family”
- “I like the excitement and adrenaline rush”
- “It makes me feel good!” (Respect, Glory, etc.)

Do you ever hear a volunteer say?

- “I do it for the money!”
- “I think I am going to quit my job - so I can volunteer all of the time!”
- “I stay here because I like to sit around the station and at meetings fighting about money, personalities and power”

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Who is a Volunteer?

- **Who is a “Volunteer”**
  - Section 3(e)(4) of the FLSA:
    - One who volunteers
    - For a public agency ("Note")
    - Receives no compensation, or
    - Is paid expenses, or
    - Reasonable Benefits; or
    - A Nominal Fee

Who is a Volunteer?

1. 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 receive no compensation, a volunteer can be paid expenses, reasonable benefits, or a nominal fee to perform such services;
2. Offers services freely and without pressure or coercion, direct or implied, from an employer; and
3. 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.

Volunteer and Paid for the Same Agency?

- FLSA forbids employees from providing "the same type of services" as a volunteer for their employer
- What are they same type of services? What is the same agency?
- The DOL has not issued any blanket guidance on this issue!
- Each case must evaluated based on it own unique merits and circumstances
- Recommendations: Use common sense and check with appropriate legal counsel!

Payment of Expenses

- Expenses may include:
  - Dry cleaning;
  - Equipment;
  - Uniforms
  - Transportation (Mileage, rental car, airfare, etc)
  - Meal costs

Payment of Expenses

- Training related expenses
- Tuition and Educational expenses
- Other types of "out of pocket" expenses
- All expenses should be verified with receipts and / or other forms of reasonable documentation

Nominal Fee?

- "Nominal Fee" is still difficult to define - even after the DOL issued a new advisory letter to the IAFC in July, 2006:
  - The letter states:
    - "No specific guidelines on what amount is defined as "nominal;""
    - "It depends on the economic realities of the situation"
    - "No guidelines on specific amounts applicable to all (or even most) possible situations can be provided."
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Nominal Fee?

• However, if the DOL determines the fee not to be nominal - then it will consider the person to be an employee. (Minimum wage and Overtime regulations apply)

• The opinion letter does attempt to provide us with some guidance to determine if a nominal fee
  - Key factor - whether or not the fee paid is "analogous to a payment for services or recompense" If so – the fee would NOT be considered nominal.
  - The only hard and fast rule for the nominal fee, which you may have seen labeled as the "bright line test," is that the fee must "not exceed 20 percent of what the public agency would otherwise pay.

Putting it All Together

• According to the DOL:

• “Departments also should consider the fees "in the context of any other benefits or expenses paid and the economic reality of the particular situation,"

Pay per Call

The DOL letter (July, 2006) does state that pay-per-call programs “may be acceptable as long as they may fairly be characterized as tied to the volunteer’s sacrifice rather than productivity based compensation”

What can you pay a Volunteer?

• What are “expenses, reasonable benefits or nominal fees?”
  – Basic formula
  – Determine total $ value of benefits
  – Determine total hours worked to obtain them
  – Divide $ by hours

What can you pay a Volunteer?

• Take the result and determine:
  – If near the current minimum wage, DOL may view the VIP as violating the FLSA
  – If “well below” minimum wage, employee is a “volunteer”
What can you pay a Volunteer?

- Example: EMT Jones gets $100 monthly stipend for:
  - Covers 8 shifts - (6 hour) = 48 hrs
  - Answered - 12 calls (1 hour @ calls) = 12 hrs
  - Total: 60 hours
  - Divide $100 by 60 hrs
  - Equals $1.67 per hour
  - DOL should consider payment to Volunteer EMT Jones as a “nominal fee”

Examples of Scenarios previously approved by the DOL

- $200 monthly pension for 20 years of service
- $40 per 24-hr standby shift plus $20 for additional 12-hr increments
- $100 monthly stipends for 24 hrs of shifts + 30% of calls
- Deduction of $14.50 per month for municipal water and sewer services

Volunteer Incentive Programs (VIPs)

- Increasingly common response to recruitment and retention problems
- Some states have passed related legislation e.g.: pension programs, LOSAP, etc.
- Mostly related to the Fire Service
- Issue: how to classify the “compensated volunteer”

Types of VIPs

- Direct Benefits
  - Cash - Examples:
    - $100 stipend per month for minimum four eight-hour shifts per month
    - $20 “standby fee” for agreeing to stay available in a 12-hour shift
    - $5 per call “activation bonus”
    - Stipends for training, mileage, uniforms, meals, conferences, etc.

- Indirect Benefits
  - Deferred benefit plans
  - Disability insurance
  - Pension programs or LOSAP’s
    - E.g., Monthly benefit of $10 per year for each year of service up to a 20-year maximum
    - E.g., Program permits volunteer to contribute $10 per month to a pension fund which the state matches
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**Service Award Program**

- Check your state law!
- Other Service Award Programs
  - Penflex, Inc.  www.pennflexinc.com
  - VFIS, Inc.  www.vfis.com
- Always check state and local laws and regulations related to these programs

**Public Agency**

- The “Public Agency” Issue
  - Rules permitting nominal volunteer compensation technically apply only to public agencies
  - What is a “public” agency?
    - Unit of local government – clearest example
    - Municipal funding??
    - City-owned station?
    - Chartered or incorporated organization?
    - Tax exempt status?

**Public Agency**

- DOL has previously applied the “public agency” tests to other non-profit, community EMS organizations
  - DOL Opinion Letters
  - However, this does not set a binding precedent
  - Every organization must weigh:
    - Benefits of enhanced recruitment and retention vs. the potential risk of back pay awards

**Practical and Important Tips**

- Make sure your volunteers have no expectation of compensation
- Volunteering is not a “required step” to become employed
- Make it clear that no employment relationship is formed by VIP or expense programs
- Make sure that all related policies, procedures and agreements are reviewed and approved by legal counsel!

**Tax Issues**

- Individual Concerns
  - Personal Income Tax
    - Gross Income Includes:
      - All income from whatever source derived
      - Compensation for services
      - Fees
      - Fringe benefits
      - Similar items

- Volunteers should report the value of benefits received under VIPs
  - Include cash payments
  - Reasonable market value of non-cash benefits and services received
- Exception: gifts
  - Defined as “detached and disinterested generosity, affection or admiration

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Tax Issues

- If payments are in return for services rendered:
  - They cannot be classified as gifts
  - Must be reported

Always check with qualified professionals including legal counsel and CPA

Tax Issues

- Organizational Concerns
  - Federal Tax Withholding
  - Must withhold taxes on wages paid to employees
  - May be required to issue a 1099 form related to payment of nominal fees and certain types of benefits and expenses

Always check with qualified professionals including legal counsel and CPA

Insurance Issues

- Workers Compensation:
  - Check with municipality - if municipally-funded
  - Make sure your volunteers are covered for work-related injuries

- Liability Insurance:
  - Ensure that policies provide full indemnification and treat volunteers as “insured”
  - Ensure that volunteers meet all policy conditions

Will “nominal fee and expense reimbursement” exclude volunteers from coverage of both workers compensation and liability insurance?

Liability Issues

- Immunity Statutes:
  - Will “compensation” affect or cause the waiving of volunteer immunity?
  - In some states, Good Samaritan immunity is premised upon “NO COMPENSATION”
  - Other states permit volunteers to receive stipend amounts

Recommendations

- Always seek legal counsel to examine and offer written legal opinions based on your particular situation
- Thoroughly investigate all relevant issues including insurance and liability issues
- Don’t risk a large back pay judgment or worse!!!

Additional Information

- FLSA Guide to Managing Volunteer Firefighters
  - Published by the IAFC - $100.00 IAFC members $250 (non member)
- Helpful and Informative Websites:
- eLaws: Fair Labor Standards Act Advisor
  http://www.dol.gov/elaws/esa/fsla/docs/volunteers.asp
- U.S. Department of Labor
  - Employment Standards Administration - Wage and Hour Division Washington, DC 20210

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**Summary**

- In most cases, VIP programs CAN HELP but will not completely solve the staffing problems that plague many emergency service organizations.
- Keep in mind that VIP’s can dramatically increase and organization’s liability - if not researched and implemented properly.
- Once initiated, may be difficult to change or terminate the program!
- Do not expect dramatic results!

**Summary**

In fact, many times even with the implementation of these types of plans and after the resources and money is spent by an organization – the number of volunteers rarely grows and may eventually decline.

**Summary**

- Conduct an Internal Analysis:
  - Survey / Questionnaires
  - Interviews with current staff and volunteers
  - Post employment / volunteer interviews
- Determine the real issues?
  - What is working and what is not?
- Develop a comprehensive year round retention and recruitment programs
- Work together with other local, regional and state agencies
- Coordinate and pool resources (grants, marketing, advertising).

**Real System Solutions!**

- If staffing and organizational issues are causing a high degree of System Failure (i.e., missed calls, poor response times, decreased or poor skill proficiency, etc.)
- All system alternatives should be explored:
  - Consolidation or Shared Services
  - Shared Employees / Rotating Stations
  - Hiring Full or Part time Staff
  - Other Relevant and Customized System Changes

**Real System Solutions!**

“We should create an environment that encourages members to grow both socially and on the fire ground, they will continue to volunteer.

“When a department is riddled with infighting and personality conflicts, it is nearly impossible to have an environment of relatedness and brotherhood.”

“A department that has an environment that is supportive of autonomy, competence and relatedness will not only have an abundance of members, but each of its members can consider themselves to truly be volunteer professionals.”

- Jason Zigmont – December, 2006 Issue of Fire Rescue Magazine

**Special Thanks to Mr. Rick Rice and to All of You for Attending**

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Questions??

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THANK YOU !!!