

## Guidance on How Much, and How, Volunteers May be Paid

New guidance from the U.S. Department of Labor (DOL) may help employers figure out exactly how much they may pay their volunteers and on what basis, without compromising their exemption from the requirements of the Fair Labor Standards Act (FLSA). The DOL states in a recent non-precedential opinion letter that “A willingness to volunteer for 20 percent of the prevailing wage for the job is . . . a likely indication of the spirit of volunteerism” that Congress intended to foster.

Also, employers may pay a firefighter or other similar volunteer stipends on a per-shift or per-call basis, as long as such payments “may be fairly characterized as tied to the volunteers sacrifice rather than productivity-based compensation”.

### The Nominal Fee Standard

The 20 percent standard was first established by the DOL in opinion letters dated August 7, 2006 and November 10, 2005. However, Congress failed to define the term “nominal fee”, leaving it up to the DOL to provide guidance in this area. The DOL regulations outline four factors the agency will consider when determining whether a payment is in fact “nominal”:

1. the distance traveled;
2. the time and effort expended by the volunteer;
3. whether the volunteer has agreed to be available around the clock or only during certain specified time periods; and
4. whether the volunteer provides services as needed or throughout the year.

### Calculating 20 Percent

Employers generally will have the market information necessary to calculate 20 percent of the “prevailing wage” for the job that a given volunteer is performing. In the case of a firefighting agency, (a)ny driver or firefighter (an employer has) on its payroll would be a good benchmark for this calculation.

However, if an employer does not have a given position on its payroll – for instance, a county with an all volunteer fire department which lacks any paid firefighters – it may instead consider data from neighboring jurisdictions, the state in which it is located, or even national data from the DOL’s Bureau of Labor Statistics ( online at [www.bls.gov](http://www.bls.gov)). The DOL’s letter also suggests that, before calculating whether a payment crosses the 20 percent threshold, employers may subtract from the payment the approximate cost of any out-of-pocket expenses that the payment is intended to compensate.

### What This Means For Counties

While the DOL’s letter approves the practice of paying a firefighter or other similar volunteer stipends on a per-shift or per-call basis, it should be regarded as guidance and does not constitute a ruling or interpretation that an employer is entitled to rely on. The letter does however offer insight into how the DOL interprets or would enforce the FLSA.

For more information, contact CTSI at 303-861-0507.