

Volunteer Compensation Practices

Best Practices Guideline

Overview: This document was developed in various stages for the Governor’s Fire Policy Task Force, the Oregon Fire Chiefs Association, the Oregon Fire Districts Directors Association, and the Oregon Volunteer Firefighters Association in order to provide some consistency and clarity related to the myriad of methods that are used to compensate volunteers.

Importantly, this document is meant to be a *guideline only* and its purpose is to *generate discussion* and outline *current practice*. The Oregon fire service is comprised of departments that cover a wide spectrum related to volunteer service. The ability of individual departments to provide direct oversight of personnel and regular due-diligence monitoring of expenditures may have a substantial effect on the method used for providing compensation.

In all cases, any proposals to change practices that have been in place should cause the agency to conduct a thorough review of their own practices and policies, as the two (actual practice vs. policy) often differ. In addition, because many methods of reimbursement and business practices may fall into a “gray area” where regulatory history and rules may be interpreted differently, we suggest that when possible, proposed practice changes should be compared with other, similar agencies to ensure consistency within the Oregon fire service.

The following categories were developed to assist agencies in identifying business practices that are to be considered compensation or that may be interpreted as “compensation” depending on how they are administered and managed.

This list is not comprehensive, but only representative of the most common practices found to be actively used within organizations that use volunteer firefighters. It is recommended that all practices and policies that are adopted related to compensation and reimbursement be reviewed by the agency’s legal counsel and financial advisors before implementation. Regardless of what is adopted, it is critical that agencies develop and maintain policy guidelines related to how they administer compensation and reimbursement.

This is intended to be a “living document”, one which will be continually updated as “Best Practice” becomes more clearly defined within the Oregon Fire Service.

Compensation to Volunteers *(Reimbursement, Points, Awards or Incentives)*

- Volunteer *expense reimbursement plans* should, if at all possible, be “accountable” in that all expenses that are allowed to be incurred by a volunteer are outlined in policy. The policy should, at a minimum, address the following points:
 - Exactly what expenses are allowed (e.g., mileage)
 - What reimbursement rates will be used (e.g., dollar-for-dollar based on receipts, IRS mileage rates, etc)
 - Procedures for reimbursement
 - Procedures for tax accounting of expenses
- Specific recommendations associated with how to manage the aspects of an “accountable” plan start on Page 4.
- Payments to volunteer firefighters of a reasonable, nominal amount per point or activity or nominal award are allowed under 29 CFR 553.106(e) for the purposes of excluding volunteers from the requirements of wage and hour laws. The threshold for what the DOL considers “reasonable” under this definition has not been specifically defined for firefighters as of this date. However, in a 2006 letter from Acting Director Alfred B. Robinson Jr. of the U.S. Department of Labor to the International Association of Fire Chiefs (IAFC), “nominal” is defined as an annual total that does not exceed 20% of what the public agency would otherwise pay in prevailing wage to hire a full time firefighter (see the IAFC publication “Managing Volunteer Firefighters for FLSA Compliance, Appendix Page 26-36).

Unfortunately, the tax laws do not follow the labor laws in this arena. There is no blanket exemption for these nominal payments, and there are at least two methods that are currently used for reporting these payments for tax purposes that would probably be acceptable. These methods are:

- Using a 1099 if the volunteer received \$599 or more in point compensation or other income during the year from the department or District.
 - Treating the volunteer as an employee and issuing a W-2.
- Currently, there are practices in place in Oregon and Washington that allow for the following:
 - Agencies determine that volunteers are “non-employees”. All payments over \$599.00 (for nominal amounts paid under 29 CFR) are reported on a 1099. The Volunteer is responsible for all personal income taxes and possibly self-employment taxes associated with the nominal income reported on the 1099.
 - Agencies determine that volunteers are “employees”. Nominal income paid under 29 CFR is reported on a W-2, and income tax, FICA, and FUTA are withheld by the agency on all amounts paid.

- Nominal income paid under 29 CFR is reported on a W-2, and no withholdings are made. The volunteer is responsible for reporting personal income and determining whether they qualify for the emergency worker exemption.

Because there are significant differences of opinion on which methodology is considered a “Best Practice”, policy makers should seek legal counsel in this area and carefully document their analysis and reasoning for making a determination of the nature of compensation and type of IRS reporting.

There are other considerations that should be analyzed prior to determining which reporting methodology should be used. For example, the following questions should be asked of counsel:

- How will it affect the volunteer’s eligibility for PERS?
 - What is the district’s liability in this regard?
 - What if the volunteer asks for unemployment benefits?
 - How does the determination affect a workers comp claim?
- In any event, *unless the department is directly reimbursing expenses (i.e., pursuant to a fully accountable plan)*, payments made to volunteers are taxable income to the volunteer. The IRS reporting requirements are not obviated should the District or department use mechanisms such as paying an amount to the volunteer association for later distribution to volunteers. The association would have the same reporting requirements for IRS reporting.
 - **Gift cards:** Gift cards provided to volunteers or employees are 100% taxable as they are being deemed as essentially cash (TAM 220437031).

Elements of an “Accountable Plan”

Transportation, Travel & Training

- **General:** In general, Agencies may reimburse volunteers directly for expenses the agency would be able to deduct as ordinary and necessary business-related expenses needed for:
 - Travel,
 - Meals,
 - Transportation.

An ordinary expense is one that is common and accepted in your field of trade, business, or profession. A necessary expense is one that is helpful and appropriate for your business. An expense does not have to be required to be considered necessary.

- **Reimbursement for Meals:** When reimbursing volunteers for per diem during out of town travel and training, reimbursement is nontaxable as long as the organization follows the federal per diem rates if no receipts are provided (http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9704&channelId=-15943&oid=16365&contentId=17943&pageTypeId=8203&contentType=GSA_BASIC&programPage=/ep/program/gsaBasic.jsp&P=MTT), or they reimburse for actual food expenses if reasonable and as allowed by the IRS. If the destination city or county is not listed in the above on-line per diem guide, use a standard CONUS destination rate of \$70.00 for lodging and total daily amount of \$39.00 for meals and incidentals (7-2008) (See IRS Publication 1542 or www.gsa.gov). In general, direct reimbursements of this nature for out of town travel expenses utilizing either the receipt or the per diem method are not reportable to the IRS as taxable income to the volunteer. Per Diem for meals paid for “in town” conferences is, however, fully taxable and not deductible by the agency.

In general, organizational payment for banquets or other events including food are not reportable income. Oregon Ethics laws allow organizations to pay for a family member or spouse to attend if certain conditions are met.

- **Tuition Reimbursement:** Organizations must have a written qualifying educational assistance policy that explains what educational benefits are covered by the organization. The IRS allows educational assistance up to \$5,250 per year per employee to be provided tax free to the employee. Tax-free educational assistance benefits include payments for tuition, fees and similar expenses, books, supplies and equipment for either undergraduate or graduate-level courses. Any amount over that is reportable as taxable income and needs to be reported to the IRS. (IRC 127) (Publication 970, Chapter 11). Legal opinions differ on whether these benefits are available only to employees or to employees and non-employees alike, so legal counsel should be consulted when constructing your plan. On site training provided to the department or agency is unlimited and does not need to be reported.

- **Mileage Reimbursement:** In general, reimbursing the volunteer for business mileage is nontaxable when the volunteer is using their personal car for business purposes. The organization should use the IRS allowable standard mileage rate (\$.585 per mile as of July 1st, 2008) or a lesser amount.
- **Department Provided Vehicle:** When the agency or department provides vehicles to chief officers and/or volunteers, this is called a working condition fringe benefit. In order to be nontaxable, it must be a qualified non-personal use vehicle. A qualified non-personal use vehicle is one that is not likely to be used more than minimally for personal purposes because of its design. It should be a clearly marked fire vehicle and the organization should prohibit travel outside the officer or firefighter's jurisdiction unless written policy requires such travel for the organization. The volunteer will typically be on-call 24/7 in order to justify any non-personal use taxability of the vehicle. (Reg. 1.274-5T(k)(3))
- **Car Allowances:** Non-accountable plan car allowances are taxable. It should be reported on the W-2 if the volunteer is considered an employee or 1099 if considered a non-employee. Non-accountable plans are plans whereby the volunteer does not have to report the mileage to the department or reimburse the department for miles underutilized. (Example: Volunteer Officer is paid \$200 a month for a car allowance to reimburse him for the personal use of his car on department business but no reporting is required of the officer to the department to justify miles driven.)

Insurances, Equipment, and Uniforms

- **Automobile Policies and Other Risks:** Best practices would be for departments to have policies requiring that volunteers follow all traffic laws when responding in private vehicles. Departments should address whose responsibility it is if the volunteer is in an accident on the way to the station *and the point at which the volunteer is deemed to be "at work" for purposes of workers compensation insurance as well as automobile insurance.* These policies should be reviewed and approved by the department's insurance carrier to ensure the insurance policies carried by the department protect the department and the "volunteer firefighter" as intended. It is important that the organization has written operating policies covering response and that the organization and volunteers understand when liability transfers for property and workers' compensation insurance. (Example: volunteer firefighter is involved in MVA when responding to the station after receiving page – policies and insurance policies should clearly define whose liability policy is responsible.)
- **Insurances:** Organizations should have defined policies regarding what insurances are covered, at what limits, and what is required for each individual volunteer. Typical insurances may include workers compensation, disability or group life insurance. Worker's compensation, physical exams, life insurance, employee assistance programs, and/or health insurances may be provided to the

volunteers as nontaxable benefits as long as the amounts are at or below IRS amounts allowed for providing insurances, and if the insurance is required by the agency. To ensure that the insurance plan qualifies, tax counsel should be sought.

- With insurance plans, non-discrimination rules apply. In addition, districts should clearly state whether the policy covers the volunteer 24/7/365, or whether the policy is just “on duty” insurance (such as a life insurance policy that only covers death while “on-duty”). Disability or accidental death insurance benefits can also be written in this way.

Districts should consider utilizing a broker or agent who can compare plans that provide coverage beneficial to volunteers while preserving and minimizing cash outlay by departments. These benefits are not typically considered taxable benefits. Physical examinations covered by the department may not be taxable if they are required to meet the job duties of a volunteer firefighter. The Taxable Fringe Benefit Guide (http://www.irs.gov/pub/irs-tege/fringe_bnft_flgsg.pdf) should be consulted.

- **Equipment and Items Provided to Perform the Job:** Portable radios, vehicles, safety equipment, cell phones, pagers, internet access, computers, etc. may be provided to volunteers for legitimate business purposes. Each agency should have a written policy that describes what the minimum requirements are for the following:
 - 1) Using the equipment for business purposes (when, where, and how the equipment should be utilized),
 - 2) If personal use is allowed, specifics that cover under what circumstances such use is allowed (including whether reimbursement for personal use is required and what calculation to use).
 - 3) Procedures and requirement for returning the equipment upon departure from the organization.

Example: The volunteer is provided a cell phone on which s/he makes both personal and business calls. The IRS requires that without reimbursement of the personal portion, the department must report and tax the volunteer (employee) on 100% of the bill. Conversely Oregon Ethics opinions indicate the department is safer to preclude any personal use of District cell phones and other property. Departments should consider review of these policies with the Government Standards and Practices Commission and/or legal counsel. (See IRC 274(d) and IRC 280(d)(4) for further clarification.)

It is also important to note that all equipment provided to the volunteer should be considered loaned equipment. The written policy should address this as well as state that it will be returned upon the volunteer’s departure; otherwise it could be argued by the IRS that it is taxable transaction if returning the equipment is not required.

- **Clothing and Uniform Items:** Clothing and/or uniforms provided by the organization for volunteers that is specifically required for the job is not taxable as long as it is *not worn or adaptable to general usage as ordinary clothing*. (IRC 162). *Example:* Firefighter turnouts are not typically adaptable to general usage and thus are not taxable. Black jeans, tennis shoes and a tee-shirt are likely to be considered taxable fringe benefits and should be reported per IRS requirements. If the clothing is specifically marked as a uniform item and policy dictates volunteers may wear clothing articles while on-call, these items are not likely taxable.

Awards, Retirement, General Business

- **Retirement Awards or Gifts:** Prizes and awards are included in gross income unless there is a specific exclusion. It may be possible to exclude from gross income certain de minimus gifts of \$25.00 or less in value, or certain personal property (e.g., watch, service pin). There are several rules depending upon the nature of the award and it is recommended the Taxable Fringe Benefit Guide be consulted. (http://www.irs.gov/pub/irs-tege/fringe_bnft_flgsg.pdf)
- **Business related expenses** paid on the volunteers behalf by the agency are allowed, such as professional organization dues and professional fire and EMS magazines. Refreshments, picnics, banquets, safety awards, and cable at the stations are allowed items and not taxable when used for the benefit of the department or station. While the IRS may allow certain items, it is also important to take into account the ethics involved in allowing such expenses. The Oregon Ethics Commission rules should be reviewed to ensure compliance in this area.
- **Retirement Package:** The tax code specifically provides a deferred compensation benefit for volunteers, not to exceed \$3,000.00 annually.

There are several different types of plans to compensate volunteers for length of service, each with differing payment and taxation consequences. These plans should be evaluated by department legal counsel as well as policy makers for long term financial commitments, costs, and whether or not the programs do encourage retention of existing volunteers.

There is usually no tax reporting until the volunteer takes or starts receiving the money; at that time it is the volunteer's responsibility to pay the taxes. When adopting these plans, past service credits should be considered, how years of service are calculated (example: one volunteer responds intermittently and another regularly), whether leaves of absence are counted against service time, and maximum benefits and payout options should be addressed. Defined benefits based on a standard amount of monthly or lump sum benefit per year of service may be options, or a defined contribution plan may be possible whereby the contribution to the plan is either based on a standard amount or an amount the department can afford. In the defined contribution plans, the departments should take care to evaluate the methodology for distributing plan contributions to the

benefit of individual volunteers. The special advantage of using a length of service award plan under IRC sec. 457 is that there is a specific statutory exemption for employment taxes.

Alternative Forms of Compensation

- Any other forms of compensation not previously mentioned are not common practice, and should be discussed with your legal counsel and/or tax accountants.