

To: Washington State Fire Protection Districts and Regional Fire Authorities.  
Dated: December 3, 2018  
From: Attorneys Brian Snure and Rich Davis

Re: Paid Family Medical Leave Act and Volunteers

There has been a fair amount of confusion as to whether volunteer firefighters are covered by the Paid Family Medical Leave Act. Recently, we received word that some representatives of Employment Security Department have stated that volunteers are covered by the Act unless the volunteer's compensation consists solely of expense reimbursement under an accountable plan. This memorandum clarifies that bona fide volunteers are not included within the scope of the Act either for purposes of calculating the number of employees an agency has or for purposes of payroll deductions and benefit eligibility.

The definition of "employment" under the Paid Family Medical Leave Act is as follows: *"Employment means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages..."* The term Wages is defined in the same manner as wages is defined under the employment security (unemployment) statutes (RCW 50.04.320).

The Washington State Supreme Court has ruled that stipends paid to volunteer firefighters are not "wages" as defined by Washington law because the Minimum Wage Act, Chapter 49.46 RCW, excludes volunteers from the definition of those who receive a "wage." *See Doty v. Town of South Prairie*, 155 Wn.2d 527, 542 (2005). Similarly, the Fair Labor Standards Act recognizes that a volunteer's receipt of nominal sum payments in an amount consistent with the Department of Labor regulations and opinions are not wages and do not convert volunteers into employees. This is true whether the payments are called points, stipends or some other name.

Accordingly, because volunteer firefighters do not receive wages, volunteers do not fall under the definition of "employment" for the purposes of the Paid Family Medical Leave Act and are not covered. This conclusion is consistent with the Employment Security Department's position that volunteer firefighters are not covered by the unemployment benefit system under Title 50 RCW. Section 316 of the Employment Security Department Tax and Wage Operations Status Manual specifically recognizes that volunteer expense reimbursements are not reportable.

The above opinion is premised on the assumption that your volunteer payments comply with the United States Department of Labor regulations and opinions defining nominal sum payments to volunteers as based on a non-accountable expense reimbursement basis.

The information contained in this document is for general educational purposes only and is not intended to be legal advice. Please consult legal counsel for advice about specific questions.

If you have questions, please contact Brian Snure at 206.824.5630 (brian@snurelaw.com) or Richard Davis at 360.671.1796 (rdavis@chmelik.com).