



Economic Affairs Interim Committee

61st Montana Legislature

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as of August 12, 2010

Memo

To: Economic Affairs Committee Members
From: Pat Murdo, Committee Staff
Re: Volunteer Firefighters and How to Count Hours Spent Sleeping at Firehouse

The Economic Affairs Committee asked for continued work on an issue raised at the June 29, 2010, meeting by Kevin Lauer of the Gallatin Gateway Rural Fire District. That issue related to the use of "all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises" as the definition for "volunteer hours" for volunteer firefighters in 39-71-118(4)(b). The term "volunteer hours" later is used regarding an election by "trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioner or trustees for a fire service area" when reporting payroll, as specified in 39-71-118(7)(b), "for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage".

Mr. Lauer's issue was that the Gallatin Gateway Rural Fire District provides sleeping quarters to certain volunteer firefighters, often students at Montana State University-Bozeman. The fire district apparently did not want to base premium on the time spent sleeping, which currently would be the case, based on the definition of "volunteer hours" and "time spent at the employer's premises". The question also is whether someone should be eligible for workers' compensation benefits for an injury suffered on an employer's premises, whether in "course and scope" of the volunteer "employment" or not.

Language proposed for consideration and sent to the Department of Labor and Industry, representatives of insurance companies, Montana State Fund, the Montana Municipal Interlocal Authority, and Doug Neil, as a lobbyist for the Montana State Firemen's Association was:

"(b) the term "volunteer hours" means all the active time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent other than relaxing at the employer's premises".

The issue with the "other than relaxing" and "active" additions to the definition is that this language conveys "course and scope" elements that raise a question of whether an injury that happens on an employer's premises in a nonwork situation ought to be subject to workers' compensation coverage.

Responses to the proposed language or requests for comment were:

- The Montana Municipal Interlocal Authority (MMIA) had no issue with the basic question because it uses a flat rate for calculating work comp (WC) premiums. Thom Danenhower with MMIA noted, "It seems to us that it might be tricky to exempt volunteers from WC coverage while at the fire house as they are not at their primary residence and thus would seem to be volunteering in some fashion".
- Mike Taylor at the National Council on Compensation Insurance said there is no separate code for "sleeping" firefighters. He said Oregon and Arizona had separate codes for volunteer firefighters:

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Oregon's code "applies only to volunteer personnel such as firefighters, police officers, or ambulance service personnel and must be assigned instead of [NCCI] Code 7710, 7720 or 7705. The insured must elect an assumed payroll for coverage in increments of \$100 per month, subject to a minimum assumed payroll of \$800 per month".

Arizona's code "applies only to voluntary personnel as described in Section 23-901, ARS. For volunteer firefighters and police officers; regular members of the Arizona highway patrol reserve, a volunteer sheriff's reserve, the Arizona game and fish department reserve; and personnel who participate in a search or rescue mission, payroll to be used for premium calculation purposes for each worker shall be the beginning salary for a similar paid employee in comparable service. For volunteer firefighters and police officers, if there is not such paid equivalent, then the payroll to be used shall be that determined by resolution of the governing body of the city, town or volunteer fire department pursuant to law".

Mr. Taylor also noted that Montana, Florida, Massachusetts, and Wisconsin use NCCI code 7704, which says "When part-time or volunteer firefighters are employed, the actual payroll of all such persons shall be included with the payroll of regular firefighters in computing the premium. In no case, however, shall the payroll of any such firefighters be taken at less than \$300 per person per annum". The NCCI definition of a volunteer firefighter, for illustrative purposes, includes someone who usually "is not routinely scheduled to be present at a specific location for purposes of responding to an emergency; instead, they may respond from home, place of employment, or another unspecified location. A volunteer firefighter may or may not receive some type of compensation or gratuity for responding to an emergency or performing a service".

- Doug Neil noted that he represented paid, not volunteer, firefighters and referred the language to Butch Weedon at the Great Falls Training Center, who forwarded the language to the Montana Fire Alliance, which is comprised of the Montana Fire Districts Association, the Montana State Volunteer Fire Fighter Association, the Montana State Fire Chiefs Association, the Montana County Fire Wardens Association, and the Montana Associations of Fire Service Instructors. See the Montana Fire Alliance response below.
- John Semple, the lobbyist for the Montana Fire Alliance, said his information indicated the Montana Fire Alliance did not feel the issue was broad enough to address at this time.
- Montana State Fund Chief Legal Counsel Nancy Butler pointed out that there also were questions about whether providing a room constituted a "wage" under the definition of wages in 39-71-123, MCA, which includes under (1)(e) "board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value...". The question is whether "rent or housing" in the case of a volunteer is "a part of" remuneration or the total remuneration. Ms. Butler said that State Fund's concern would be that premium and benefit calculations go together and that if premiums were no longer paid for the "time sleeping" or "relaxing" then benefits would not be available for injuries that happened at those times.
- No other insurer representatives or department personnel responded.

Bottom line: One option for calculating payroll for a "sleeping" volunteer firefighter might be to consider lodging or rent to be wages rather than using "volunteer hours". This does not address a related issue raised by Mr. Lauer at the Economic Affairs Committee, which was that the fire house would like to host special events, like televised football games, and would not want to pay premiums on volunteers spending that time on the employer's premises. The issue could become part of the broader "course and scope" discussion included in the Labor-Management Advisory Council bill draft. Or someone may separately propose to revise the language of "volunteer hours" for volunteer firefighters. But in response to inquiries there was no great consensus on approaches or need for statutory changes to the law at this time.