



CALIFORNIA STATE FIREFIGHTERS' ASSOCIATION

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AB 1299

Volunteer firefighter reimbursement

Requested by volunteer firefighters and endorsed by volunteer firefighters

Background and answers to most commonly asked questions regarding Assembly Bill 1299

This bill protects volunteer firefighters and their legally earned reimbursements.

Assembly Bill 1299, authored by Assembly Member Heath Flora (R – Ripon), and sponsored by California State Firefighters' Association (CSFA) representing over 15,000 California firefighters is currently working through the state Legislature in Sacramento. There are some confusing rumors surrounding this proposed law and there have been some misleading media reports that have fed these rumors. This document spells out in detail the background and reasons this legislation should become law. Simply put, this law will specify a consistent manner to reimburse volunteer firefighters, give those firefighters rights if they are denied their earned stipends, and ensure that fire chiefs are in compliance with federal guidelines regarding labor law and volunteers.

As a volunteer firefighter you are governed by the Fair Labor Standards Act

Although you may be a volunteer firefighter and perform your duties strictly as a volunteer with no expectation of any reimbursement, **you are** governed by the U.S. Department of Labor's Fair Labor Standards Act (FLSA).

The Fair Labor Standards Act and volunteers

In 1985 the United States Supreme Court had ruled that those who "work in contemplation of compensation" are "employees" within the meaning of the Fair Labor Standards Act (FLSA), even though they may view themselves as "volunteers."

A "volunteer" under the FLSA is "an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered." **However, volunteers may be paid expenses, benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers so long as the "nominal fee is not a substitute for compensation and must not be tied to productivity." In addition, volunteer firefighters can be paid a nominal amount on a 'per call' or similar basis.**

The "20 percent rule"

In 2006 the U.S. Department of Labor (DOL) issued an opinion regarding volunteers being paid or reimbursed. This was not specific to firefighters, but volunteers in general, and it is often referred to as the **"20 percent rule"**.

The DOL opinion of 2006 presumes that a fee paid to volunteer firefighters is "nominal" as long as the fee does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time firefighter for the same services. "A willingness to volunteer for 20 percent of the prevailing wage for the job is a likely indication of the spirit of volunteerism contemplated by the FLSA," according to the DOL.

Although the DOL created the "20 percent rule" it has been enforced in a variety of ways, and not always in the best interest of line firefighters.

Why do we need AB 1299?

Volunteer firefighters serve as the backbone of the California mutual aid system, and they are a valuable resource in fighting wildfires. Volunteer firefighters are dedicated to their local communities, but many times are also called upon to leave their families, jobs and other obligations to serve on Strike Teams away from their homes. **The state reimburses fire departments who participate in mutual aid agreements in order to pay volunteer firefighters.** These reimbursements help in some small way to offset the lost wages volunteer firefighters experience while out on the fire lines. **Unfortunately, many fire departments do not disperse these reimbursements to the volunteer firefighters.** When compensation is not properly dispersed to volunteers who have served on Strike Teams, they may become discouraged from participating as volunteers, thus compromising public safety. Current law does not legally ensure full reimbursement directly to firefighters nor does it specify the rate. Also, AB 1299 provides volunteer firefighters the ability to pursue civil action if the fire department fails to pass-through the reimbursement.

How did we get here?

Back in 2016 the California State Firefighters' Association (CSFA) was contacted by **many volunteer firefighters from throughout the state** asking for assistance to rectify a situation that had left some volunteer firefighters **without compensation for service on Strike Teams.** At issue were wide variances in the interpretation of the so-called "20 percent rule" regarding reimbursements to volunteers for service on Strike Teams. At the urging of volunteer firefighters, in 2017 CSFA sponsored AB 1283 to help rectify

the situation, but it failed to make it to the Governor's desk. In 2019 CSFA sponsored AB 1299 authored by Assembly Member Heath Flora (R – Ripon).

The bill's author was a volunteer firefighter

Before his election, Assembly Member Flora spent 15 years as a volunteer firefighter, so he personally knows the importance of proper reimbursements to front line firefighters. AB 1299 also enjoys the support of statewide fire service stakeholders including the California Fire Chiefs Association and the Fire District Association of California in addition to CSFA. This is commonsense legislation that will benefit the entire California fire service.

Clarify, clarify, and set guidelines for fire chiefs

For years there has been an ambiguity around the ability to pay or reimburse volunteer firefighters for their time. The issue has made it very difficult for fire chiefs from all over the state to commit to allowing their volunteers to participate in Strike Teams or other mutual aid events. AB 1299 will end the ambiguity and set a specific guideline for fire chiefs.

One of the ways that the 20 Percent Rule has been interpreted, and the way that led to the creation of this bill, was that volunteer firefighters were only being given 20 percent (or less) of the money that OES had reimbursed their department for their time while on Strike Teams. CSFA and many individual volunteer firefighters found that unfair.

20 percent of what?

Hourly? Daily? Annually? How was this 20 percent being interpreted? The answer is all of them and many more. There was no consistency, no best practice, and no guideline. One of the purposes of this bill is to once and for all, set that guideline. AB 1299 clearly defines the 20 percent as 20 percent of the annual salary of a firefighter from the same department, or in the case of an all-volunteer fire department, a number to be determined as the average annual salary of a firefighter in California.

This bill allows volunteer firefighters more opportunities to serve

There are many volunteer fire chiefs across the state that have repeatedly stated that they do not participate in Strike Teams, and that they do not pay stipends to their firefighters because their lawyers or the county's lawyers have told them to "stay away" from paying volunteers for fear of giving them "employment rights". AB 1299 puts an end to all of those fears. It will be clear to fire chiefs that they can reimburse volunteers for their time without jeopardizing their volunteer status. This will give the departments the ability to offer stipends or paid shifts to their volunteers.

Does this bill limit the use of volunteers?

Only if the reimbursements exceed the 20 percent rule. However, **language in the bill clearly states:** *“in the case of an emergency proclamation by the Governor, the 20 percent reimbursement threshold will be waived.”* The 20 percent rule will have **no impact on State Master Mutual Aid deployments.**

Will full time firefighters preference over volunteers?

The right to first refusal for full time people over volunteers in combination departments is common practice now, and is usually set forth in union contracts. This provision in AB 1299 will have **no impact whatsoever at all-volunteer departments.**

In summary, AB 1299 does the following

1. Makes sure **volunteer firefighters get 100 percent of the money** that OES is paying for them to be on a state incidents.
2. **Protects volunteer firefighter stipends** that can be used as a recruitment and retention tool.
3. **Sets a clear guideline** on how much you can pay a volunteer without jeopardizing their volunteer status.
4. **Provides volunteer firefighters the right** to pursue legal action if they are denied reimbursements.
5. **Assures that volunteer fire departments** can be used as resources throughout the state.
6. **Protects fire chief’s ability to send strike teams** on incidents without worry of violating FLSA rules.