

## **Recruitment and Retention of Volunteers: How far can we go?**

by Bradley M. Pinsky

Recruitment and retention are important, no doubt. The question is, how far can fire and EMS companies go to retain volunteers? There have been many ideas attempted, and some of the ideas threaten the protections offered to volunteers.

Volunteer EMTs and firefighters receive a certain level of protection under the law by making it harder to prove that the EMT or firefighter breached the standard of care. Instead of having to prove that a volunteer EMT was simply negligent (failed to act as an ordinary EMT would), a plaintiff must prove that a volunteer EMT was grossly negligent (failed to even attempt to act as an ordinary EMT would). Volunteer firefighters have even more protection. A plaintiff must prove more than that the volunteer firefighter was simply negligent, but instead must prove that the volunteer firefighter was reckless (such that the firefighter's actions were so likely to cause injury that the actions were almost intentional). This is extremely difficult to do in many instances.

Both of these higher standards are referred to, in New York, as the "Good Samaritan" law.

However, if the volunteer EMT or firefighter has the expectation of compensation or remuneration (expects to receive money or a reward for his actions), the volunteer will lose the protection offered by the law, and a plaintiff need only prove the EMT or firefighter was "negligent". This is much easier to prove than gross negligence or recklessness.

Therefore, the question is, what is the expectation of compensation or remuneration? Service award programs (pension programs for volunteer EMTs and firefighters) have been overlooked by plaintiffs as qualifying as an expectation of compensation. This is a good thing, because the law presently makes no exception to the definition of remuneration or compensation for the Service Award Program. However, the law clearly did not intend to penalize volunteers for receiving this pension, and it is not likely that a volunteer would lose his/her volunteer status as a result of being enrolled in the Service Award Program.

However, some other ideas could result in the loss of the volunteer status. Direct monetary payments or gifts related to the attendance at a call or drill could result in a loss of volunteer status. However, for those agencies that want to reward volunteers with such gifts for attendance at drills or calls, one approach is to relate the gift to the activity. For instance, if a volunteer responds to a call, the volunteer places wear and tear on his uniform, flashlight, stethoscope, turnout gear, gloves, etc. Replacement of items such as these, based on the accumulation of points from attendance at drills and calls, directly relates to the wear and tear placed on such items. Therefore, the agency could create a program that is designed to replace worn items. When does an item necessarily become worn? After an EMT or firefighter attends a certain number of calls or drills, you may presume any item carried was worn.

Alternatively, the agency could believe that certain equipment is preferred to be carried by a volunteer, though not required. After the volunteer attends a certain number of calls or drills, if the volunteer has not purchased the item for himself, he could be awarded such item. Some fire departments, for example, provide "New Yorkers" to the new interior firefighters once they complete the interior classes. A fire helmet is certainly related to fire fighting and is obviously necessary for the job.

Another item intended to retain a volunteer that should not jeopardize the volunteer status is life insurance. This item is related to work in fire and EMS and should be given to a volunteer. Life insurance could be a policy on top of that provided under New York law. However, there are two types of life insurance: term and whole life. Term insurance expires at a certain age, and has no monetary value. Whole life, however, has a monetary value, never expires, and the insured can take a loan against the value of the policy at some point. This type of insurance might jeopardize the volunteer status, as it could accumulate a significant cash value.

Law firms can also provide retention services. For instance, the agency could work with a firm to provide wills for discounted rates. Scicchitano, Frateschi & Pinsky provides deeply discounted rates for its fire and EMS clients in order to provide a benefit related to firefighting/EMS. A law firm could also provide a "pre-paid" legal plan, such as the payment by the fire department or EMS agency of a flat fee in return for legal services to members such as house closings and traffic ticket settlement. Such legal services are certainly related to keeping the volunteer out of legal trouble or in the service area.

There are many ways to recruit and retain volunteers. However, the volunteer agency should ensure that it is not offering benefits that could result in a loss of the volunteer status. Loss of such status could result in loss of a lawsuit, and loss of life insurance and disability protections offered to volunteer firefighters and EMTs. Consult with your attorney for a determination of whether any recruitment or retention program might result in a loss of volunteer status.