

**From:** Stokes, Richard L  
**Sent:** Monday, July 23, 2012 2:11 PM

**Cc:** Wolf, Dennis  
**Subject:** Unemployment Insurance for Volunteer Firefighters

Let me first apologize for the delay in responding to your inquiry. I have been out of the office since last week and am just getting around to answering my messages.

You have asked if the city must pay unemployment insurance on its' volunteer firefighters.

Unemployment insurance provides benefits to unemployed workers who have lost their jobs through no fault of their own. Most employers who have workers in Tennessee are liable to pay the state unemployment insurance premiums and the Federal Unemployment Tax (FUTA).

All employers doing business in Tennessee are subject to the provisions of the Tennessee Employment Security Law and Regulations. Liability depends on the type and nature of the business, the number of workers employed, and the amount of wages paid. An employer is liable under the Tennessee Employment Security Law if the employer:

7. is a state or local government unit or political subdivision,

Once liability is established, all employers are subject to the Employment Security Law for at least two calendar years, regardless of the number of employees, as long as they employ workers.

Before you can know how to treat payments you make for services rendered to you, you must first know the business relationship that exists between you and the person performing those services. An employer must generally withhold income taxes, withhold and pay social security and Medicare taxes, and pay unemployment taxes on wages paid to an employee.

The Tennessee Employment Security Law establishes a further test for determining whether or not a worker is an employee within the meaning of unemployment legislation. This test, known as the ABC test, is found at T.C.A. Section 50-7-207(e):

Service performed by an individual shall be deemed to be included service (i.e., employment) for purposes of this section irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the Administrator that:

A. Such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under any contract for the performance of service and in fact;

B. such service is performed either outside the usual course of the business for which the service is performed, or is performed outside of all the places of business of the enterprise for which the service is performed; and

C. such individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

Persons engaged in the following types of activities are considered “employees ” under the Tennessee Employment Security Law, and employers must report these persons on their quarterly unemployment insurance Wage Report (LB-0851) and Premium Report (LB-0456). The covered employees are

1. An officer of a corporation;
2. Any individual who, under the usual common-law rules applicable in determining the employer/employee relationship, has the status of an employee;
- 5. Employees of state and local governments not specifically excluded from coverage. (See Exclusions on the following page);**
8. Employees on whose earnings employers are required to pay Federal Unemployment Tax (FUTA);

Exclusions (Section 50-7-207(c))

Some employers are excluded from the premium paying provisions of the law by the definition of employment. Persons engaged in the following types of activities are not considered “employees” under the Tennessee Employment Security Law. Employers DO NOT report these persons on their quarterly Wage Reports (LB-0851) and Premium Reports (LB-0456) and these persons will not be counted in determining whether the employer has sufficient employment to be liable under the Tennessee Employment Security Law.

**19. government services performed by an employee serving on a temporary basis in the case of fire, storm, snow, earthquake, tornado, flood or similar emergency;**

Therefore, it appears to me that if your volunteer firemen are indeed volunteers and only respond “on a temporary basis in the case of fire”, then they would be excluded from your unemployment insurance

I hope this information is helpful. Feel free to contact me if you have questions or I can be of any further assistance.

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