Volunteer Information

elaws - Fair Labor Standards Act Advisor

Volunteers

The Fair Labor Standards Act (FLSA) defines employment very broadly, i.e., "to suffer or permit to work." However, the Supreme Court has made it clear that the FLSA was not intended "to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another." In administering the FLSA, the Department of Labor follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable or similar **non-profit** organizations that receive their service.

For example, members of civic organizations may help out in a sheltered workshop; men's or women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or elderly; parents may assist in a school library or cafeteria as a public duty to maintain effective services for their children or they may volunteer to drive a school bus to carry a football team or school band on a trip. Similarly, an individual may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with disabled children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs.

Under the FLSA, employees may not volunteer services to **for-profit** private sector employers. On the other hand, in the vast majority of circumstances, individuals can volunteer services to public sector employers. When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community with but one exception - public sector employers may not allow their employees to volunteer, without compensation, additional time to do the same work for which they are employed. There is no prohibition on anyone employed in the private sector from volunteering in any capacity or line of work in the public sector.

For information about independent contractors and trainees (including School-to-Work programs) or to find out whether you are covered by the FLSA, click on the underlined text.

Remember that some employees are exempt from various provisions of the law. To explore the broad categories of these exemptions or to obtain further information about the FLSA, click on the underlined text.

For more information, please contact your local Wage and Hour District Office.

Please click on the **Back** button to return to the Advisor.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

July 31, 2001

FLSA2001-18

Dear ***Name**,*

This is in response to your request for an opinion as to the compensability under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 et seq., of the time spent in various activities by employees of your client, a hospital you have characterized as "nonprofit." These employees are nurses, some of whom perform the activities in question in hopes of obtaining and maintaining membership in the hospital's Clinical Career Advancement Program (CCAP), which results in their receipt of higher pay. You have asked if these activities may be excluded from compensable hours of work by virtue of being considered either non-compensable volunteer services or non-compensable training activity. We regret the delay in responding to your inquiry.

The activities in question involve, in part, participation in community service activities, such as taking blood pressure at a health fair, teaching child care classes to expectant parents, participating in "career day" at a local school, helping the Red Cross, or helping with the hospital picnic. The activities may be in programs sponsored either by the hospital or by community organizations.

Other activities in question involve employee attendance at patient care conferences, task force meetings, and committee meetings. These meetings may involve such subjects as consideration of which heart monitor should be used by the hospital, development of a pain management program, oversight of compliance with ethical obligations, development of quality assurance, or determining how a particular hospital department should be redesigned. Nurses who attend these conferences and meetings during their normal duty hours are compensated for this time, but you ask if nurses who come in on their days off or stay after their regular working hours for such meetings need be compensated for such time.

A final category of activities involves attendance at out of town continuing education conferences or meetings, for which the hospital pays conference admission fees and travel and lodging expenses. Both CCAP and non-CCAP participants participate in all these activities.

The compensation requirements of the FLSA apply to employees, a term defined by Section 3(c) of the Act as "any individual employed by an employer." An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." Section 3(d). And Section 3(g) states that "employ" means "to suffer or permit to work." These terms have been construed expansively in order to effectuate the broad remedial purposes of the Act.

While the definitions which trigger application of the FLSA are very broad, their reach is not unlimited. There are certain circumstances under which individuals working on the premises of another are not considered employees subject to the compensation requirements of the Act. Individuals may work for charitable, civic or religious nonprofit enterprises without expectation of compensation and be considered a "volunteer" not included in the definition of "employee" subject to the requirements of the Act. Such activities have been described as "ordinary volunteerism." Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 303 (1985). In determining whether a particular activity involves "ordinary volunteerism," the Department considers a variety of factors, including the nature of the entity receiving the services, the receipt by the worker (or expectation thereof) of any benefits from those for whom the services are performed, whether the activity is less than a full-time occupation, whether regular employees are displaced, whether the services are offered freely without pressure or coercion, and whether the services are of the kind typically associated with volunteer work.

It has been determined, however, that employees subject to the Act may not choose to "decline" the protections of the Act by performing activities for their employer that the employer and employees have characterized as "volunteer" services. Tony and Susan Alamo Foundation, supra, at 302. In that case, the Supreme Court was concerned that unless employees were barred on a general basis from "volunteering" to perform any services for their employers there would be potential for the coercion of uncompensated

services, to the detriment of the purposes of the Act. Id. The Court did not wish to allow the prohibition against employees waiving their protections under the Act to be circumvented by characterizing work as "volunteer" services, citing Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981) and Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1945). Accordingly, where employees of a non-profit organization perform "volunteer" work of the same type that constitutes their normal work activity, we have uniformly taken the position that the "volunteer" work is compensable. This concern extends to both non-profit and for-profit employers.

You have indicated that the nurses' activities described above may be performed under the direction and control of the hospital, or in some instances under the direction and control of a civic or charitable organization such as the Red Cross. As explained above, the nurses cannot classify these activities as "volunteer" services when they are performed under the direction and control of their employer, the hospital. The time spent in such activities is compensable work time when it is subject to the control of the hospital. It would seem particularly inappropriate to consider the time spent at patient care conferences and task force meetings as non-compensable "volunteer" time when that activity seems to be so closely related to the nurses' normal duties. The time spent by the nurses in activities under the control of other entities, however, may be considered "ordinary volunteerism" if the criteria for that type of activity described above are satisfied. These conclusions apply equally to all nurses, whether or not they have chosen to participate in the CCAP.

You have also asked if the time spent at out-of-town conferences and meetings may be considered non-compensable because attendance at these functions is the result of the employee's decision to take a day off to pursue a personal interest. In light of the sponsorship by the hospital of the nurses' participation in these activities by payment of their fees and expenses, we do not believe the attendance at these functions be characterized as purely personal. A determination as to the compensability of this time would seem to depend on the application of the criteria in 29 C.F.R. 785.27 relating to the compensability of time spent in training. In particular, it is necessary to determine if attendance at the conferences trains the nurses for a new position, as opposed to providing training to enable them to perform their current duties more effectively. The former time is non-compensable, whereas the latter is compensable. Unfortunately your letter does not provide enough information for us to determine if this time is compensable or not under these criteria.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a different conclusion than the one expressed herein. This opinion is also provided on the basis that it is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with the provisions of the FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely,

Thomas M. Markey
Acting Administrator

*Note: * The actual name(s) was removed to preserve privacy.*

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

September 16, 2005 **FLSA2005-33**

Dear ***Name****,

This is in response to the letter submitted by your predecessor concerning the application of the Fair Labor Standards Act (FLSA) to exempt and nonexempt employees who volunteer their time at the annual 5K and 10K run hosted by your employer, a 501(c)(3) nonprofit university. Specifically, you ask whether time spent on the race, such as volunteering on the race day, is considered hours worked under the FLSA or volunteer activity.

According to the inquiry, the volunteer activities performed are completely separate from the normal duties performed by "almost all the employees" who participate. The activities are performed during and after their normal working hours and include packet pickups, course marshalling, water distribution and staffing a table at the finish of the race with fruit, water, etc. Employees are notified and asked for assistance by flyer, but there are no ramifications if an employee chooses not to participate. In addition, the regular pay of exempt and nonexempt employees is not affected by the participation of the employees as volunteers at this event. Employees are paid their usual compensation for race-related activities that occur during their normal working hours.

According to FLSA section 6, an employer must pay all employees not less than the minimum wage for all hours worked. As indicated in 29 C.F.R. § 785.44 (copy enclosed), "[t]ime spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked," so long as the volunteer activities are not the same or similar to the activities the employee is employed to perform. See also Field Operations Handbook § 10b03(c) and (d) (copy enclosed). It is Wage and Hour Division policy that when employees volunteer to do the same type of work that they perform as a part of their normal work duties, the volunteer work must be included in the employees' hours worked calculations. See Opinion Letters dated July 31, 2001 and December 27, 1972 (copies enclosed). Therefore, it is our opinion that the employer must compensate employees for the hours spent volunteering during their normal working hours or when the volunteer work performed is similar to their regular duties. As for those employees at the race who perform duties that are not similar to their regular duties and that are voluntarily performed after their normal working hours, those employees' volunteer activities are not considered hours worked for the purpose of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the questions presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. 259. See 29 C.F.R. 790.17(d), 790.19; Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

January 27, 2006 **FLSA2006-4**

Dear ***Name****:

This is in response to your letter inquiring whether your client's incentive based pay plan (the Plan), which includes civic and charitable volunteer activities, complies with the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), or whether your client must treat the hours the employees spend on such volunteer activities as compensable working time. As long as the plan complies with the standards described herein, the volunteer activities are not compensable.

You represent an energy utility that has a pay plan that includes "results pay awards" or bonuses that are based on a work group's performance. The work group's performance bonus is calculated using a rewards matrix. This matrix, which differs by work group, awards varying amounts of points based on several categories of activities and performance standards. One of these categories, "Community Participation via Volunteer Efforts" (such as working with Habitat for Humanity or the United Way), accounts for approximately 10% of the total points the group could achieve under the plan. The rewards matrices are designed so that an employee group can reach the highest award level without performing any volunteer activities.

You present several scenarios involving work group employees volunteering and ask whether under the FLSA these activities may be performed without compensation, or whether the employer must pay the non-exempt employees for these activities. The employer never requires the employees to volunteer but does actively promote participation in the volunteer activities. The right or expectation of continued employment is not affected by an employee's decision to participate or not participate in any such civic or charitable activities. The volunteer work in question is performed outside of normal working hours. If the employees were to perform volunteer work during normal working hours, with prior approval, they would be compensated for this time.

Section 3(g) of the FLSA (copy enclosed) defines the term "employ" as "to suffer or permit to work." To suffer or permit to work means that if an employer requires or allows employees to work, the time spent is generally counted as hours worked. Time spent "in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business" must be paid in accordance with the minimum wage and overtime requirements of the FLSA. *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944).

It is also important to note that the FLSA recognizes the generosity and public benefits of volunteering and allows individuals to freely volunteer in many circumstances for charitable and public purposes. The Wage and Hour Division has recognized that a person may volunteer time to religious, charitable, civic, humanitarian, or similar non-profit organizations as a public service and not be covered by the FLSA. Such a person will ordinarily not be considered an employee for FLSA purposes if the individual volunteers freely for such organizations without contemplation or receipt of compensation. Typically, such volunteers serve on a part-time basis and do not displace paid workers or perform work that would otherwise be performed by employees. Field Operations Handbook § 10b03(c); WH Opinion Letter October 7, 2002 (copy enclosed).

However, when an employer directs an employee to volunteer, that time is compensable. The regulations state:

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

29 C.F.R. § 785.44 (copy enclosed). Therefore, we caution that volunteer activities "must be truly voluntary and any coercion or pressure, whether direct or indirect by the [employer] to participate in this program outside of [] duty hours would negate the voluntary nature of the program." WH Opinion Letter

January 29, 1999 (copy enclosed). As explained below, employers may encourage their employees to volunteer their services for public or charitable purposes outside of normal working hours without incurring an obligation to treat that time as hours worked so long as participation is optional and non-participation will not adversely affect working conditions or employment prospects.

Therefore, the employer need not compensate an employee for time spent volunteering for charitable purposes if the work is performed outside of normal working hours and the employee is truly volunteering, not performing the volunteer work as a result of coercion or pressure by the employer. Thus, employees who volunteer in a fundraising project of a local charity that is not connected with the employer need not be compensated for the time volunteered, provided they are not performing duties relating to their employment. See WH Opinion Letters June 20, 1983 and July 31, 2001 (copies enclosed). However, while the employer may occasionally sponsor a Habitat for Humanity project or a blood drive, if there is a significant connection between the employer and the charity, they may be found to be a single enterprise under FLSA section 3(r). In that case, the hours worked for the charity must be combined with the hours worked for the employer and compensated. With this framework in mind, we will now address each of your questions specifically.

Question 1: Does the employer have a duty to compensate non-exempt employees for the time they spend volunteering on a Habitat for Humanity project outside of normal working hours?

Scenario 1: This scenario involves a Habitat for Humanity project sponsored by the employer. The manager of Work Group A e-mailed the members of the work group encouraging them to participate in the event and advising them how many volunteers were needed to complete the house on schedule. The manager sent a follow-up e-mail to the group informing them that, without a full crew, the workday may be longer or put the project behind schedule. A full crew for the event was assembled, and no employees were compensated for the time spent working, which was not on a normal work day. However, the project was added to the work group's performance under the reward matrix.

Answer 1: When the employees volunteer for Habitat for Humanity outside their normal working hours, the employer neither controls nor requires the volunteer work, nor receives any benefit from it. Therefore, the definition of "employ," discussed above, is not met. The employer is merely trying to encourage employees to donate their time to others in this scenario and is not obligated to treat the volunteer hours as compensable time worked under the FLSA. See WH Opinion Letter April 20, 1984 (copy enclosed). Consideration of volunteer service, such as Habitat for Humanity, in the determination of a group bonus does not change this conclusion, provided no employees are denied any part of the bonus for failure to participate in volunteer activity or led to believe that their work conditions or employment prospects would be affected by non-participation, such as would occur if the group could not qualify for the full bonus without performing volunteer work. In the employer's performance pay plan, volunteer work accounts for only 10% of the total points available. The employees in this situation would have no expectation of compensation for their volunteer work because, among other things, they would have no way to know whether the group ultimately will meet its rewards goal for the year or whether the group will achieve the maximum award even without any employee's volunteer service.

Question 2: Does the employer have a duty to compensate non-exempt employees for the time they spend volunteering on any of the projects described in Scenarios 2, 2.1, or 2.2 outside of normal working hours?

Scenario 2: This scenario involves the reward matrix of Work Group B, which provides that for volunteer activity to count towards the reward matrix, it must be done with only one specifically identified community service agency. Volunteer work is, at most, 10% of the group's overall goal matrix. Additionally, rewards are not based on the number of hours worked but rather on the average number of projects in which group employees participate. In this scenario, there is no communication from management to the employees soliciting participation in the volunteer program.

Answer 2: The answer to Scenario 1 applies to this scenario.

Scenario 2.1: This scenario involves a different matrix scheme. Under this matrix, volunteer work is only one eighth of one goal under the matrix, and thus is far less than 10% of the total points in the matrix. Additionally, given the structure of the matrix, it is possible to receive the maximum number of points under the plan without volunteering.

Answer 2.1: The answer to Scenario 1 also applies to this scenario.

Scenario 2.2: This scheme is similar to Scenarios 2 and 2.1 except that it requires that all members of the work group participate in the activity for the work to count toward the reward matrix. All members of the group are required to work 12 hours outside of normal work hours for a qualifying 501(c)(3) organization of their choice to fulfill the volunteer work section of the matrix. If this requirement is met, the employer will in turn donate $100-$200 to the organization.

Answer 2.2: The answer to Scenario 1 also applies to this scenario.

Question 3: Does the employer have a duty to compensate non-exempt employees for the time they spend volunteering for the weatherization program outside normal working hours?

Scenario 3: The employer operates a program to "weatherize" the homes of low-income families. Employees who volunteer spend one Saturday per year weather-proofing area homes. The entire program is sponsored and run by the employer. While participation is voluntary, the employer does send an e-mail from the Community Affairs Department and a memo from the CEO to the employees to encourage them to participate.

Answer 3: The answer to Scenario 1 also applies to this scenario. We note that employees who participate receive promotional items and sufficient materials to weatherize their own homes. We assume that the materials received are of such minimal value that they could not be considered compensation. In that situation, the employer is merely trying to encourage employees to volunteer their time for a charitable purpose and need not count such time as compensable hours worked. See WH Opinion Letter July 31, 2001; FLSA § 3(e)(5) (copy enclosed) (recognizing that individuals who volunteer to a non-profit food bank for humanitarian purposes are not employees even if they receive groceries).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis if your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the questions presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. *See* 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures:
FLSA § 3(e) and (g)
Field Operations Handbook § 10b03(c)
29 C.F.R. § 785.44
WH Opinion Letters October 7, 2002, January 29, 1999, June 20, 1983, July 31, 2001, and April 20, 1984.