

Wage and Hour Division  
United States Department of Labor  
Office of Enforcement Policy Opinion Letter  
Fair Labor Standards Act (FLSA)  
June 28, 1996

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This is in response to your letter requesting an opinion as to the treatment of certain volunteers under the Fair Labor Standards Act (FLSA).

You state that you represent a not-for-profit hospital which utilizes volunteers. These volunteers generally perform functions related to patient comfort and welfare such as tending to the patients' non-medical requests such as requests for drinks, snacks, magazines and personal care items. The volunteers also perform certain functions which are generally the duties of compensated employees, including office duties and some duties which are performed by nurses and orderlies. Some of the volunteer positions are staffed by a local service organization for which the hospital makes donations. The volunteers do not work in compensated positions at the hospital nor do they receive remuneration from the hospital or service organization.

Further, the hospital maintains several gift shops which sell flowers, balloons, gifts, publications, personal care items and sundries, and which are generally staffed by volunteers. However, due to a lack of volunteers available or willing to work on weekends and holidays, the hospital pays certain employees to work at these gift shops on weekends and holidays. Specifically, you wish to know whether the staffing of these gift shops with volunteers would be in violation of the FLSA.

Please note that we have a longstanding policy of limiting volunteer status to those individuals performing charitable activities for not-for-profit organizations. In order for the FLSA to apply, an employment relationship must exist. The FLSA defines the term "employ" as including "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, and similar not-for-profit organizations which receive their services.

With respect to individuals seeking to perform volunteer services in hospitals, the Department does not consider individuals who volunteer to minister directly to the comfort of the patients in a manner not otherwise provided by the hospital to be employees under the FLSA. This could include reading to the patients, writing letters for the patients or entertaining the patients, which are duties not ordinarily performed by nurses or other such employees of the hospital. The work in the gift shop, however, does not involve ministering directly to the comfort of the patients and is on occasion performed by paid employees of the hospital. Therefore, individuals working in the gift shop are employees under the FLSA subject to the requirements of the Act.

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 request might require a different conclusion than the one expressed herein. You have also represented that this opinion 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,

Daniel F. Sweeney  
Office of Enforcement Policy Fair Labor Standards Team