



## Are "Volunteers" The Answer For Non-Profits?

Insights

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A reader of our March 14 [post](#) relating to unpaid internships at non-profit organizations asks whether non-profits can avoid the intern debate by offering "volunteer" opportunities to engage in charitable or public-service activities. But this simply changes the nature of the potential problem.

### **"Volunteer" Activities Can Be FLSA Employment**

Considering someone to be a "volunteer" does not necessarily mean that he or she is a non-employee for federal Fair Labor Standards Act purposes. This is true even if (i) the person is not otherwise employed by the organization; (ii) the individual's activities are said to be of a charitable or public-service nature, and (iii) the activities are carried out for or on behalf of a non-profit organization.

There is some overlap between the considerations relevant to who is and is not a true "intern" or "volunteer" so as not be an FLSA employee, but the two concepts are fundamentally different. A principal distinction is that the underlying motivation for being a volunteer is not the same. Perhaps one of the most important characteristics of volunteerism is whether the individual undertakes the activity for his or her own, personal civic, humanitarian, charitable, religious, or public-service reasons.

Some of the other factors include whether the activities are of a kind typically associated with volunteer work; are less than a full-time occupation for the individual; do not involve replacing regular employees or impairing employment opportunities; are subject only to "nominal" or "minimal" control by the recipient of the person's efforts; and tend to occur at times suiting the individual's own convenience, whether by schedule or otherwise.

### **Some Volunteers Fall Within Specific Exceptions**

The FLSA itself excludes individuals who volunteer to perform services under certain circumstances for a state, a political subdivision of a state, or an interstate governmental agency. 29 U.S.C. § 203(e) (4). These exceptions explain why, in the proper situations, volunteers at public schools and in some other settings are not viewed as being engaged in FLSA employment.

The FLSA also contains a special exception for individuals who volunteer their services to private, non-profit food banks and who receive groceries from the food banks. But even this provision applies only if the person does so "solely for humanitarian purposes."

The point is that, just because a neighbor is a non-employee volunteer at the county's middle school, for example, one should not assume that "volunteers" of all sorts are seen in the same light.

### **Think Things Through Carefully**

It is wise to be cautious in evaluating even non-profit "volunteer" relationships under the FLSA. One illustration of the possible uncertainty is that the U.S. Labor Department's Office of Enforcement Policy has said that volunteers who staffed a non-profit hospital's gift shops were instead performing compensable work for FLSA purposes (see link to reproduction below).

Note too USDOL's position that individuals may not "volunteer" to do things for their *employer* which are the same as or are similar or related to their normal work duties. Instead, it says, this is compensable FLSA worktime. USDOL might also take the same view regarding time an employee spends even in arguably dissimilar services of a public or charitable nature, if this occurs at the employer's request, under its direction or control, or during the employee's normal working hours. See, e.g., 29 C.F.R. § 785.44. "Volunteering" by an organization's employees is beyond the scope of this post, but it is a "go slow" matter where the FLSA is concerned. Compare *Opinion Letter of Acting Wage-Hour Administrator FLSA2006-18* (June 1, 2006) [volunteering to chaperone cultural and sporting field trips provided under employer's auspices] with *Opinion Letter of Acting Wage-Hour Administrator FLSA2001-18* (July 31, 2001) [status of certain activities engaged in by nurses employed at non-profit hospital].

[USDOL OEP Hospital Opinion 06 28 96.pdf \(22.02 kb\)](#)