

## When Volunteering At Work is Allowed



While most of us would define a volunteer as one who provides a service freely and without an expectation of receiving payment for such services, the Fair Labor Standards Act (FLSA) sometimes requires that volunteers be paid for their time. The Department of Labor (DOL) has issued opinion letters on the circumstances under which private employees may volunteer their time, for either their employers or other agencies.

### **Are private sector employees permitted to volunteer their services for their private sector employers?**

No. The DOL has repeatedly stated that private sector employees are prohibited from performing virtually all types of volunteer work for their employers, even if the employees volunteer to perform tasks not related to the employees' own jobs. The policy behind this prohibition is that Congress fears that allowing paid employees to perform the same type of services for their employers on an uncompensated "volunteer" basis, even in the absence of coercion, would allow employees to waive their rights to compensation that is specifically due them under the FLSA. Private sector employers should not allow their employees to perform any volunteer work for them

An exception exists where a private sector employer volunteers in an event sponsored by the employer. For example, a company may sponsor building of homes for Habitat for Humanity and may encourage employees to volunteer and may give recognition and rewards to employees who do volunteer. As long as the employer is not directing the employees to volunteer and the volunteering occurs outside of the employee's normal work hours, it is not considered compensable time.

The answer is different, however, if a nonexempt employee works to organize the volunteer activity during work hours or if the employee is the volunteer coordinator and is directed by management to coordinate the activities of the volunteers that day. Then the time would be compensable.

### **Can public sector employees volunteer to work in the public sector?**

Yes and no. The FLSA allows public sector employees to volunteer for other civic, charitable, or humanitarian organizations or even their own organizations when that volunteering meets three requirements:

1. There is no promise, expectation, or receipt of compensation for the services rendered. It is acceptable to pay expenses, reasonable benefits, or a nominal fee.
2. The employee offered his or her services freely and without coercion, direct or implied, from the employer, and
3. The individual is either not employed by the public agency for whom the services are being performed or the individual employee is not performing the same type of services that employee is otherwise employed to perform.

## Can private sector employees volunteer to work in the public sector?

Yes. The FLSA contains no prohibition regarding individuals employed in the private sector that volunteer in any capacity in the public sector so long as the services are provided with no promise, expectation, or receipt of compensation for the services rendered. Individuals may perform any type of volunteer services for a public sector entity without violating the FLSA, including performing the exact services that individuals would normally perform for compensation for their individual private sector employers.

## What constitutes “the same type of services”?

The DOL uses common sense on a case-by-case basis. A nurse employed by a hospital is not permitted to volunteer to perform nursing services at a health clinic operated by the same hospital. Employees, however, may volunteer to perform jobs that are wholly different in nature from their paid jobs. For example, the following employees would be considered bona fide volunteers:

- A school secretary who volunteers as an usher or ticket taker for school events, such as concerts or football games, and
- A full-time custodian who volunteers as a part-time assistant baseball coach.

The common thread in these examples is that even though employees are volunteering their services for the agency that pays them, the duties performed are dissimilar in nature from those that the employees would ordinarily perform in their paid positions.

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## Can employees volunteer for an organization other than the one that employs them to perform the same job duties for which they are normally compensated?

Yes. While Congress has specifically barred employees from volunteering for their own employers in the same capacity for which they are ordinarily compensated, employees are permitted to volunteer the same services for a different agency. Examples include:

- A paid firefighter in Town A is permitted to volunteer as a member of Town B’s volunteer firefighting squad, and
- A paid police officer in one town may volunteer as a reserve police officer in another town.

As usual, the existing law does not clear up every question. May a paid emergency medical technician volunteer as an unpaid firefighter for the same municipality? The situation would be examined on a case-by-case basis and the answer may depend on the degree of overlap of the two functions.

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