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BLOGS

Archives;Department of Labor;Wage & Hour

This Holiday Season, Beware the Unpaid Volunteer

As Thanksgiving and the holiday season approaches, companies often look for ways to contribute to charitable causes within their communities. One way they might accomplish this worthwhile endeavor is by creating and encouraging their employees to participate in formal volunteer opportunities. This is a great way for companies to give back and for individual employees to take a break from the rigors of everyday business life and focus on helping others. Whether employees should be compensated for participating in these volunteer activities, however, is not always clear, and if companies aren't careful, they could be the recipients of an unwanted gift this season a wage and hour lawsuit.

There are a few key concepts under the Fair Labor Standards Act (FLSA) that employers must be aware of when it comes to volunteers. An overarching principle is that individuals may not provide volunteer services to for-profit companies under any circumstances. That rule is easy to follow, but what about situations where an employer is sponsoring volunteer activities in the community and encouraging (or rewarding) their employees attendance at such activities? In that situation, caselaw and guidance from the U.S. Department of Labor (DOL) suggests that a nonexempt employee performing volunteer services need not be compensated if each of the following criteria are met:

1. The volunteer services are provided for religious, charitable, civic, humanitarian, or similar public services;
2. The volunteer services are provided without contemplation or receipt of compensation;
3. The volunteer services are provided freely without coercion or undue pressure from an employer;
4. The volunteer services are provided outside of normal working hours; and
5. The volunteer services are unrelated to the employees regular duties and the employers usual business.

A common issue that arises in these situations is whether an employer has, directly or indirectly, pressured employees to participate in volunteer activities. In general, if an employee is treated more favorably or provided with advancement opportunities because they have volunteered, then the volunteers must be compensated for their time. It does not matter if the employer proclaims that such volunteering is optional if it has an impact on an employees standing within the company, it is not truly optional and must be compensated.

In a [March 2019 opinion letter](#), the DOL attempted to further clarify the voluntariness of a volunteer program. The letter answered questions about an employer's optional volunteer program where workers perform activities either sponsored by the employer or chosen by employee. As part of the program, the employer provided a bonus to the group of employees with the greatest community impact. Workers were compensated for time spent volunteering during work hours but not for time spent outside of work hours. The DOL also said that the employer could use an employee's time spent volunteering as a factor when calculating a bonus without treating volunteer time as hours worked, as long as a failure to volunteer did not have an adverse impact on the employee's working conditions or employment prospects.



Given the above, companies should be careful to not dictate or control its employees volunteer activities. While there is nothing wrong with alerting employees to opportunities or even helping to coordinate those opportunities, the actual volunteering should be run by an outside nonprofit entity. Further, employees performance ratings and prospects for advancement should not be positively or negatively affected by their participation in such volunteer activities. Following these simple steps will keep a positive, feel-good headline from turning into a real headache for employers.