



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

When May an Employee Also Serve as a Volunteer?

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Often, nonprofit employers hire employees who are motivated not only by a paycheck, but also by a passion for the organization that employs them. In addition to performing their regular jobs, these employees may feel inspired to contribute to their organization outside of their normal working day, in a volunteer capacity. For example, a clerical worker at an animal shelter may want to volunteer at a weekend adoption event. Although these arrangements can benefit all involved, employers must approach them with caution. When certain conditions are not met, even employees who freely volunteer their time may be considered by the Fair Labor Standards Act ("FLSA") to be "working" and therefore entitled to a paycheck.

Background

The FLSA defines the employee-employer relationship and governs the payment of minimum wage and overtime pay. Generally, unless an employee is subject to an exemption under the FLSA, an employer must pay the employee the federal minimum wage, plus time-and-a-half for all hours worked over 40 in a work weekⁱ [for more information about the FLSA employee exemptions, see "[Wage and Hour Law for the Nonprofit Organization](#)"]. The Department of Labor ("DOL") or an employee may bring suit to enforce the FLSA, and an employer who has incorrectly classified its employees can be subject to paying two to three years of back pay, liquidated damages, and attorneys' fees and costs.ⁱⁱ

Exemptions for Volunteers

The DOL has repeatedly recognized the importance of volunteerism to charitable and civic organizations, and properly classified volunteers are not considered "employees" covered by the FLSA. Proper classification is key, however, because an individual may not agree to waive the protections of the FLSA. For general information on the FLSA and volunteers, see "[Addressing the Risks of Working with Volunteers.](#)"

The volunteer inquiry differs when the person "volunteering" is already an employee of the nonprofit because of concerns that employees may feel coerced to perform unpaid work. Employers do not have to pay employees for their volunteer time when:

- the services are performed for a civic, charitable, or humanitarian reason, without promise, expectation, or receipt of compensation;
- there is no coercion or undue pressure on the employee to perform the volunteer work;
and
- the volunteer services are not the same type of services performed by the individual in his or her regular employment.ⁱⁱⁱ

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An employer must examine the *actual* duties performed by the employee to determine if the paid and volunteer positions are of the same type, defined in the regulations as “similar or identical services.” Additionally, the DOL has suggested analyzing the titles of the regular and volunteer positions using the government’s O*NET occupational descriptions, available at <http://www.onetonline.org/>.

The DOL has provided the following examples of services that may be truly “volunteer,” even when performed by employees of a nonprofit or government agency:^{iv}

- At a volunteer fire department, paid office employees may volunteer to provide firefighting services.
- At a nonprofit serving at-risk children, a secretary may chaperone a sporting field trip with children that takes place outside of the secretary’s normal working hours.
- At a nonprofit university, employees may volunteer to staff a 5K run hosted by the university, when the duties are not similar to their regular duties and are performed outside of normal working hours.
- At a school, secretarial, clerical, and bookstore employees may volunteer as ticket-takers, ushers, box office personnel, or security guards at football games or theater performances.
- In the case of a city government employer, a police officer may volunteer to referee a city sports league.
- At a hospital, a clerical worker may volunteer to spend time with an elderly patient during non-working hours.

Alternatively, the DOL has said the following work must be paid, even if the employee agrees to work in a “volunteer” capacity:

- At a volunteer fire department, a firefighter may not work some shifts for pay and others on an unpaid, volunteer basis.
- At a nonprofit serving at-risk children, a counselor whose regular duties include supervising children may not volunteer to chaperone a field trip.
- At a school, a teacher’s aide may not volunteer to stay after her regular shift and work in a classroom, helping teachers, grading papers, and assisting with other projects.
- At a school, an IT employee may not volunteer to update the school’s computers during the summer break.

Conclusion

Organizations must keep these principles in mind when deciding whether employees should be paid for volunteer time:

- The volunteer services must be aimed at advancing civic, charitable, or humanitarian goals, without the promise or expectation of any compensation.
- The employer must not require or coerce the volunteer services.
- The volunteer services must not be the same type of services performed by the employee in his or her regular position.

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If you have any concerns about whether your employees are properly volunteering their services, please seek legal counsel.

ⁱ 29 U.S.C. §§ 206-207 (2006).

ⁱⁱ 29 U.S.C. § 255 (2006); 29 U.S.C. § 216(b) (2006 & Supp. II 2008).

ⁱⁱⁱ *See* 29 C.F.R. § 553.103.

^{iv} U.S. Dep't of Labor, WH Opinion Letters, FLSA2008-14 (Dec. 18, 2008), FLSA2006-18 (June 1, 2006), FLSA2006-40 (Oct. 20, 2006), FLSA2006-28 (Aug. 7, 2006), FLSA2005-16NA (Dec. 20, 2005), FLSA2004-8 (Sept. 7, 2004).

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