



*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.*

## The Dangers of Compensating Volunteers

Nonprofit organizations are permitted, under the Fair Labor Standards Act (“FLSA”), to have volunteers perform work for them. However, it is important to be sure that “volunteers” are truly volunteers, and are not actually employees of the organization.

The FLSA defines volunteers as meeting the following criteria:

- A volunteer provides entirely voluntary services to a religious, educational, charitable or nonprofit organization.
- The work done by a volunteer benefits the organization more than the volunteer.
- A volunteer does not replace an employee. (Note: employees are not “volunteers” if they are doing their regular jobs for extra time without pay or if they are “volunteering” during their regular work hours.)<sup>1</sup>
- A volunteer has no expectation of compensation (including no expectation of being paid in the future, either as an employee or otherwise).
- A volunteer’s duties are of the kind typically associated with volunteer work, and are distinctly different from the duties of the organization’s regular employees.

### Paying Volunteers Can Lead to Misclassification Lawsuits

Paying a volunteer, whether that pay is in the form of cash, a check or even a gift card, can transform that person into an employee, contrary to the organization’s intentions. The Internal Revenue Service equates gifts cards with monetary gifts, and therefore, giving a gift card is the same as paying a volunteer cash. Employees are entitled to be paid minimum wage and to overtime pay, and may be entitled to other benefits, such as unemployment compensation. By paying a volunteer something, the organization makes it appear that the volunteer is entitled to be paid. In most circumstances, the money being provided would not meet the minimum wage required under the FLSA, and it may also not meet overtime requirements if the volunteer puts in more than 40 hours in a week. The danger here is that, if the individual later claims that he or she was really an employee or if

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<sup>1</sup> See this article on our website for additional information - When May an Employee Also Serve as a Volunteer, <http://www.pbpatl.org/resources/when-may-an-employee-also-serve-as-a-volunteer/>

the organization's practice comes to the attention of the Department of Labor, costs can be substantial. The organization may be liable for the difference between the amount paid to the individual and the minimum wage, pay for any overtime worked, and back taxes, interest and penalties to the IRS and the state, not to mention unemployment compensation or other benefits that were not provided to the individual.

### **So, what can an organization do for its volunteers?**

#### Volunteers Can Be Reimbursed for Expenses

It is permissible to reimburse volunteers for their expenses. If a volunteer incurs expenses as part of his or her volunteer work, the volunteer should submit an expense report with receipts to the organization before being reimbursed. That way, the organization will have proper documentation of the reimbursement, and can show why the money was paid to the volunteer.

#### Volunteer Can Still Be Recognized for Their Efforts

Remember that just because volunteers cannot be paid does not mean that they cannot be recognized by the organization for their efforts. It is appropriate to reward volunteers in non-financial ways. For example, the organization could hold a luncheon for volunteers, or provide them with a plaque or other small non-monetary token of appreciation. Volunteers have many different motivations, but almost all appreciate some recognition of their efforts and contribution to your organization.

For more information on legal issues in working with volunteers, please see these resources on our website: <http://www.pbpatl.org/resources/employees-volunteers/volunteers>.