



APRIL 1, 2019

U.S. DOL Issues Opinion Letter Concerning Volunteer Activities and Hours Worked Under the FLSA

On March 14, 2019, the United States Department of Labor (“DOL”) issued an opinion letter concerning whether an employee’s time spent participating in an employer’s optional volunteer program, which awards a bonus to certain participating employees, is hours worked under the Fair Labor Standards Act (“FLSA”). The DOL determined that participation in the program does not count as hours worked under the FLSA, so long as the employer does not unduly pressure its employees to participate. The DOL also determined that the employer may use a mobile device application to track a participating employee’s time spent volunteering, so long as the employer does not use the application to direct or control the employee’s activities.

The Optional Volunteer Program

The opinion letter concerns an employer that provides an optional community service program for its employees. Under the program, employees engage in certain volunteer activities that either the employer sponsors or the employees themselves select. The employer compensates employees for the time they spend on volunteer activities during working hours or while they are required to be on the employer’s premises. However, many of the hours that these employees spend on volunteer activities are outside normal working hours. At the end of the year, the employer rewards the group of employees with the greatest community impact with a monetary award. The winning group’s supervisor decides how to distribute the award among the employees. In making this decision, the supervisor may consider how many hours each employee volunteered. The employer does not require employees to participate in the program, or direct or control their participation. The employer is considering using a mobile device application to track each participating employee’s volunteer hours.

Legal Principles

Citing to several of its own opinion letters, the DOL outlines the following general legal principles:

- The FLSA recognizes the generosity and public benefits of volunteering and allows people to freely volunteer time for religious, charitable, civic, humanitarian, or similar public services;
- A person is ordinarily not an employee under the FLSA if the individual volunteers without contemplation or receipt of compensation;
- A volunteer must offer his or her services “freely without coercion or undue pressure,” direct or implied, from an employer;
- An employer may notify employees of volunteer activities and ask for assistance with them as long as there are “no ramifications if an employee chooses not to participate”; and
- The practice of compensating employees when they participate in volunteer activities during normal working hours does not jeopardize their status as volunteers when they participate in volunteer activities outside of normal work hours.

Additionally, an employer may use an employee’s time spent volunteering as a factor in calculating whether to pay the employee a bonus, without incurring an obligation to treat that time as hours worked, so long as: (1) volunteering is optional, (2) not volunteering will have no adverse effect on the employee’s working conditions or employment prospects, and (3) the employee is not guaranteed a bonus for volunteering.

DOL’s Opinion

It is the DOL’s opinion that employee participation in the employer’s program is charitable and voluntary. The employer does not require participation in the program and does not control or direct volunteer work. The DOL stated that it did not appear that the employees suffer adverse consequences in their working conditions or employment prospects if they do not participate in the volunteer activities. Moreover, the employer does not guarantee participating employees a bonus for their volunteer work. Instead, the employer only awards the group with the most community impact and gives the winning group’s supervisor discretion to determine what amount of bonus, if any, to award to individual employees in the group.

Takeaway for Employers

Employers should remember that the FLSA is not intended to discourage or impede volunteer activities, but rather to prevent manipulation or abuse of minimum wage or overtime requirements

through coercion or undue pressure on individuals to “volunteer” for their services. Thus, great care should be taken to ensure that volunteering is optional. Similarly, not volunteering should have no adverse effect on employees. Under no circumstances should employees be guaranteed a bonus for volunteering.

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If you have any questions regarding the DOL's opinion letter, please do not hesitate to contact us.

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