

Volunteer or Employee: Do You Know the Difference?

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Q: What is the definition of a volunteer?

A: Federal law, under the federal Fair Labor Standards Act, (FLSA) defines individuals that provide services without any expectation of compensation, and without any coercion or intimidation, as "volunteers" (non-employees).

However, there are all sorts of nuances to this definition. For instance, if a volunteer receives a small payment or something of value in exchange for volunteering, is the worker automatically an employee even if she or he didn't "expect" to be paid? What about a worker who is not compensated but receives college credit for her work? Still a volunteer? Maybe, maybe not.

Many volunteers receive indirect compensation that the government doesn't count as "compensation," such as free parking. Discounts at the cafeteria would also fall into the category of compensation that is provided more for the convenience of the nonprofit (to encourage volunteers to volunteer) than as "compensation" for the volunteer. However, other types of indirect compensation—such as a free membership to the Y's fitness center provided to volunteer instructors—has a real dollar value and may be established by the nonprofit as a "quid pro quo" for volunteering, and thus can be considered compensation.

Some factors that may tip the balance between volunteer and employee include:

- Is the worker motivated by a personal civic, humanitarian, charitable, religious or public-service motive?
- Are the services performed typically associated with volunteer work?
- Are the services provided different from those typically performed by paid workers and are the hours of service less than full time?
- How much control does the nonprofit exert over the volunteer while she or he is performing services?
- Does the volunteer typically arrange his or her own schedule to provide services when it is convenient for the volunteer?

To be sure whether or not the worker in question is really a volunteer, we encourage you to contact us at info@nonprofitrisk.org with details about how, if at all, you compensate or reimburse your volunteers.

Q: What happens if we mis-classify a worker as a volunteer?

A: Employees are owed minimum wage, overtime payments (if applicable) and withholdings for salary, such as income tax and social security payments, that the nonprofit will have to pay to the worker if the government determines that the worker is really an employee. The nonprofit will also have to include the worker in the pool of covered insureds for workers' compensation purposes, if ordinarily volunteers are not eligible for workers' compensation insurance.

Q: Can an employee at a nonprofit volunteer for the nonprofit?

A: The U.S. Department of Labor takes the position that employees may not volunteer to do things for their employer that are "the same as, similar, or related to" their normal job duties or, if the volunteer's services are provided at the employer's request or direction or during the employee's normal working hours, **even if the duties being performed are dissimilar** from the employee's regular job duties.

Like many questions posed, the answer hinges on the specifics of the circumstances. If you still have questions after reading the above, please get in touch with us via info@nonprofitrisk.org.

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