

PUBLICATION

Volunteers at For-Profit Companies: Bad Idea Even if for a Good Cause

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Fall is upon us and the holiday season will soon follow. Along with the joy of this special season often comes requests from civic groups to partner with for-profit companies for fundraising or other charitable purposes. For example, the local Rotary Club might request that its members serve as your restaurant's wait staff for a night with all tips and donations going to a charity of its choosing; or a charitable organization may offer to assemble your company's mass mailings in exchange for a donation. For-profit organizations must, however, carefully consider the Fair Labor Standards Act prior to using volunteers. Because, if a court or the Department of Labor ("DOL") deems that a volunteer actually performed the services of an employee, that person must be paid at least the minimum wage and overtime if applicable under the FLSA.

While the FLSA encourages volunteerism for civic or charitable reasons, it generally prevents volunteering for-profit organizations. It does so by defining volunteer as work done:

- 1) for a public agency; or
- 2) for a civic, charitable, or humanitarian reason.

The FLSA also defines work very broadly as simply to "suffer" or "permit to work." Under these two definitions, most volunteers partnering with a for-profit company, and not for a public agency or other civic or charitable group, could easily be classified as employees.

In fact, an Interpretative Memorandum from the DOL makes it clear that most workers - regardless of how titled - are employees. It also talks specifically about the FLSA's definition of "employee" and "work" being broad enough to include volunteers who provide labor to employers.

The DOL has also issued two opinion letters addressing the issue of volunteers offering services to for-profit organizations. Notably, in both cases, the volunteers requested to volunteer with a for-profit company as a part of a fundraiser for their civic group.

1) Volunteers who provide services to for-profit organization in exchange for donations to group are employees

In the first opinion letter, the DOL found that members of church groups and non-profit community groups who offered volunteers to do gift wrapping for a mail order company in exchange for donations to the group were employees. The DOL stated that the "services would not in themselves contribute to community or religious programs; instead the services are going to a profit-seeking company" and "[i]t makes no difference that the groups have agreed that payment should go to their community organizations or churches."

2) Volunteers who work for tips for their organization are employees

In the second opinion letter, the DOL found that student baggers who worked at a grocery store in exchange for tips that were given to their school organizations were employees of the grocery store. The DOL again stated that "[i]t does not matter that the students indicated a desire that payment of the tips they received in

exchange for performing their services for the supermarket should go to their particular community organizations."

Therefore, volunteers at your business could expose you to FLSA liability.