

Can a volunteer receive some compensation and still be a volunteer?

The principal benefit provided by volunteers is that they provide services with no expectation of compensation, whether it be in cash, benefits, or otherwise. However, many employers have chosen to pay volunteers a per diem, “nominal remuneration,” or, occasionally, some fringe benefits. When deciding whether to pay a volunteer, there are some legal considerations that must first be addressed.

Volunteers are generally not considered to be employees under the Fair Labor Standards Act (FLSA). Therefore, municipalities may enjoy the benefits of volunteer services without implicating the wage and overtime provisions of the FLSA. The FLSA exempts individuals volunteering for local governments if the individual receives no compensation, or is only paid expenses, reasonable benefits, or a nominal fee; and the services performed by the individual must not be the same type of services which the individual is employed to perform for the town.

The Code of Federal Regulations (CFR) further defines the term “volunteer” under the FLSA to mean “an individual who provides service to a public agency for civic, charitable, or humanitarian reasons, with no expectation of payment or remuneration by the public agency.” 29 C.F.R. § 553.101 (a). There are some important caveats to this general rule. The most important one, as noted above, is that an individual will not be considered a volunteer if he or she is otherwise employed by the municipality and performs the same type of work for which he or she is ostensibly volunteering. For example, John Smith is on the town road crew and frequently operates a front-end loader in the repair and maintenance of the town highway system. At the same time, the town is endeavoring to build a children’s park, which requires some heavy digging. Mr. Smith has volunteered his time, and the town has volunteered the use of the loader to construct the park. The hours Mr. Smith works must be calculated with his regular hours, because the work performed is the same type of work Mr. Smith performs as a paid employee. Therefore, he must be paid his regular wage. In addition, if the hours worked are overtime hours, Mr. Smith must be given compensatory time off at the rate of one and a half times the hours worked, or, if the town’s practice is to pay overtime, he must be paid for those overtime hours worked.

Note that individuals may volunteer for *other* municipalities even though they volunteer the same services for Town B that they perform as employees of Town A.

Municipal employers *may* pay volunteers expenses, fees, or provide “reasonable benefits” without forgoing their volunteer status. Reasonable benefits may even involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers’ compensation) or pension plans or “length of service” awards. 29 C.F.R. § 553.106.

In summary, municipal employers are not obligated by law to give benefits to volunteers, though benefits may be paid to volunteers without the employer being required to satisfy FLSA requirements in relation to the volunteer’s work status. In order to avoid the triggering of FLSA requirements, the volunteer must not expect compensation. Therefore, it should be made clear to volunteers, in either the personnel policy or in a job description, that volunteers will not be paid and should not expect any payment from the town. Again, this does not preclude the municipal employer from

paying expenses, reasonable benefits, and nominal fees or stipends, or a combination thereof. 29 C.F.R. § 553.104.

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