



July 19, 2002

FLSA2002-4

Dear **Name***,

This is in response to your inquiry on behalf of **Name***, Mayor of **Name*** regarding volunteering under the Fair Labor Standards Act (FLSA). Mayor **Name*** is concerned that provisions of the FLSA may prevent a town from paying an "EMT" if the EMT is also an unpaid volunteer EMT in the same town. We regret the delay in responding.

Initially, it is important to note that the FLSA recognizes the generosity and public benefits of volunteering, and does not pose obstacles to bona fide volunteer efforts for charitable and public purposes except in very narrow circumstances. By enacting the 1985 FLSA amendments, Congress sought to ensure that true volunteer activities were neither impeded nor discouraged, while at the same time minimizing the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements through coercion or undue pressure on individuals to "volunteer" their services.

In this regard, an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for the services rendered, is considered to be a volunteer during those hours. However, under the legislative compromise that Congress reached in the 1985 FLSA Amendments, an individual is not considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer. This limitation is found in the statutory definition of "employee" (section 3(e)(4) of the FLSA, 29 U.S.C. Sec. 203(e)(4)). Consequently, under the FLSA, an employee of a public agency may volunteer to perform the same type of services for a different public agency, or may volunteer to perform a different type of service for the same public agency that employs him or her without restriction.

These provisions still offer individuals a vast array of opportunities to serve their communities as volunteers. For example, individuals who are not employed in any capacity by State or local government agencies may donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of the public agencies if their hours of service are provided with no promise, expectation, or receipt of compensation for the services rendered. There are no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies. Examples of services which might be performed on a volunteer basis when individuals are so motivated include helping out in a sheltered workshop or providing personal services to the sick or elderly in hospitals or nursing homes; assisting in a school library or cafeteria; or driving a school bus to carry a football team or band on a trip. Individuals may also volunteer as firefighters, EMTs or auxiliary police, or perform such tasks as working with developmentally disabled or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs or volunteering other services needed to carry out charitable or educational programs.

Similarly, employees of public agencies also have many opportunities to volunteer hours of service in one capacity or another, without contemplation of pay for the services rendered. Employees may even volunteer hours of service to the same public agency that employs them, provided that the volunteer services are not the same type of services which the individuals are employed to perform for their agency. For example, a city police officer may volunteer as a part-time referee in a basketball league sponsored by the city. A county parks department employee may serve as a volunteer firefighter or EMT. An office employee in a county hospital may volunteer to spend time with a disabled or elderly person in the same institution during off duty hours as an act of charity. A county sheriff may volunteer in a search or rescue capacity for surrounding jurisdictions or for neighboring cities and counties. An employed firefighter or EMT may volunteer his or her services to a church, hospital, civic or charitable organization in any capacity, or to any other public agency. Individuals performing hours of service for a public agency will be



considered volunteers not covered by the FLSA for the time so spent when the services are performed in accordance with the guidelines the Congress set forth in sections 3(e)(4)(A) and (B) of the FLSA.

One final provision of the FLSA that is relevant to your inquiry on behalf of Mayor **Name *** merits mentioning. Volunteers to public agencies may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for bona fide volunteer service, without losing their status as volunteers (see 29 CFR §553.106, copy enclosed). For example, individuals do not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing their volunteer service, such as payment for the cost of meals and transportation expenses. Nor do they lose their volunteer status if they are provided reasonable benefits by a public agency for their volunteering, such as participation in group insurance or pension plans, or "length of service" awards. Similarly, individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee, however, may not be a substitute for compensation or tied to productivity. A fee would not be considered nominal if it is, in fact, a substitute for compensation, or tied to productivity (e.g., payment of hourly wages for services rendered). This would not prevent, however, payment of a nominal amount on a per call or per assignment basis, for example, to bona fide volunteer EMTs. See 29 CFR §553.106(e). Whether the nature and structure of payments made to individuals would result in their losing volunteer status is determined by examining the total amount of payments made (expenses, benefits, fees) in the context of each particular situation.

We hope that you find the above information helpful in addressing the concerns raised by Mayor **Name ***. If you have questions or need additional information, please do not hesitate to contact us again.

Sincerely,

Tammy D. McCutchen
Administrator

Enclosure

*Note: * The actual name(s) was removed to preserve privacy.*