



FLSA2019-2

March 14, 2019

Dear **Name\***:

This letter responds to your request for an opinion 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). This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for use in any litigation that commenced prior to your request.

## **BACKGROUND**

You represent that your client provides an optional community service program for its employees. Under this program, employees engage in certain volunteer activities that either your client sponsors or the employees themselves select. Your client compensates employees for the time they spend on volunteer activities during working hours or while they are required to be on your client'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, your client rewards the group of employees with the greatest community impact with a monetary award, and 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. Your client does not require employees to participate in the program or direct or control their participation. Finally, your client is considering using a mobile device application to track each participating employee's volunteer hours.

## **GENERAL LEGAL PRINCIPLES**

Congress did not intend for the FLSA "to discourage or impede volunteer activities," but rather to "prevent manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to 'volunteer' their services." 29 C.F.R. § 553.101. Indeed, 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. WHD Opinion Letter FLSA2006-4, 2006 WL 561849, at \*1-2 (Jan. 27, 2006). A person is ordinarily not an employee under the FLSA if the individual volunteers without contemplation or receipt of compensation. WHD Opinion Letter FLSA2018-22, 2018 WL 4562932, at \*1 (Aug. 28, 2018). Of course, the volunteer must offer his or her services "freely without coercion or undue pressure," direct or implied, from an employer. *Id.* (citing WHD Opinion Letter FLSA2006-18, 2006 WL 1836646, at \*1 (June 1, 2006); *Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761, 767 (6th Cir. 2018)); see WHD Opinion Letter FLSA2006-4, 2006 WL 561849, at \*2 (citing 29 C.F.R. § 785.44).

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.” WHD Opinion Letter FLSA2005-33, 2005 WL 3308604, at \*1 (Sept. 16, 2005); *see also* WHD Opinion Letter FLSA2006-4, 2006 WL 561849, at \*1–2 (stating that volunteer time was not hours worked where the employer “actively promote[d] participation in the volunteer activities” but non-participation did not “adversely affect working conditions or employment prospects”). Moreover, 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. WHD Opinion Letter, 1999 WL 1002361, at \*2 (Jan. 29, 1999).

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. *See* WHD Opinion Letter FLSA2006-4, 2006 WL 561849, at \*2–3.

## **OPINION**

The facts you have provided confirm that employee participation in your client’s program is charitable and voluntary. Your client does not require participation in the program and does not control or direct volunteer work. It does not appear that the employees suffer adverse consequences in their working conditions or employment prospects if they do not participate in the volunteer activities—such as, for example, by receiving a monetary penalty or by being disqualified from participating in a bonus program. Moreover, your client does not guarantee participating employees a bonus for their volunteer work. Instead, your client only rewards the group with the most community impact and gives the winning group’s supervisor discretion to determine what amount of the bonus, if any, to award to individual employees in the group. As such, participation in your client’s program does not count as hours worked under the FLSA, so long as your client does not unduly pressure its employees to participate. *See* WHD Opinion Letter FLSA2006-4, 2006 WL 561849, at \*2–3.

As a separate matter, your client may use a mobile device application to track a participating employee’s time spent volunteering to tally hours and determine which team’s volunteering has the greatest community impact. But if your client uses the application to direct or control the employee’s activities by, for example, giving specific instructions about what volunteer work he or she should do, or how he or she should do it, the time the employee spends following these instructions is hours worked under the FLSA. *See id.* at \*2 (“[W]hen an employer directs an employee to volunteer, that time is compensable.”).

We trust that this letter is responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Sonderling", with a long horizontal flourish extending to the right.

Keith E. Sonderling  
Acting Administrator

**\*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).**