

FLSA-166

March 12, 1987

This is in further response to your correspondence requesting clarification of the application of the Fair Labor Standards Act (FLSA) to disabled individuals who wish to volunteer their time and service to *** Industries, a sheltered workshop. You indicated that these individuals are previous clients of the workshop or other disabled members of your community who request permission to volunteer for humanitarian purposes.

Your inquiry has been considered under FLSA, the Federal law of most general application concerning wages and hours of work. Employees subject to this law must be paid a minimum wage of not less than \$3.35 an hour and not less than one and one-half times their regular rates of pay for hours worked over 40 in a workweek, unless a specific exemption applies. The major provisions of FLSA are outlined in the enclosed "Handy Reference Guide to the Fair Labor Standards Act."

Section 3(g) of FLSA defines employment very broadly to include "to suffer or permit to work." However, the U.S. Supreme Court has held in Walling v. Portland Terminal Co., 330 U.S. 148, that this does not bring within FLSA "each person who, without promise or expectation of compensation, but solely for their personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit." This addresses what is commonly known as volunteer services.

Volunteer services are discussed on pages 6 and 7 of the enclosed pamphlet, Employment Relationship Under the Fair Labor Standards Act. As indicated therein, individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees of the religious, charitable, and similar nonprofit corporations which receive their services.

It is the position of the Wage and Hour Division that handicapped individuals, who would normally qualify as clients of the workshop, may volunteer to perform tasks at the workshop which would otherwise be performed by non-client volunteers but cannot be considered volunteers when performing work that clients of the workshop would ordinarily perform.

It appears from your letter that the persons who wish to donate their services to your organization may be mentally handicapped individuals who perhaps live and work in highly structured settings. When dealing with such persons, it is particularly important to make clear to them the voluntary nature of their work and the fact that they are free not to participate in volunteer activities. To ensure this understanding, we suggest that written information about volunteer activities be made available to both the disabled volunteers and their parents or guardians at the start of the volunteer period.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

Paula V. Smith
Administrator