



November 5, 2004

FLSA2004-19

Dear **Name***,

This is in response to your letter dated December 1, 2000 written on behalf of the **Name***. You request guidance under the FLSA concerning the ability of a Fire Captain to also volunteer as a Chaplain serving the same public employer.

The FLSA recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to bona fide volunteer efforts for charitable and public purposes. Please be assured that this Administration fully supports volunteerism and is committed to work to ensure that citizens are able to freely volunteer their services for charitable and public purposes consistent with the law. Wage and Hour Division (WHD) staff is prepared to work with and offer assistance to the municipality on FLSA compliance.

Section 3(e)(4)(A) of the FLSA and 29 CFR 553.101 and 553.103, copies enclosed, indicate that individuals are volunteers, not employees of a public agency, when they meet the following criteria:

- A. Perform hours of service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered. The statute clarifies that a volunteer performing such service can either receive no compensation or be paid expenses, reasonable benefits or a nominal fee to perform such services.
- B. Offer their services freely and without coercion, direct or implied, from the employer; and,
- C. Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer. In other words, individuals can qualify as volunteers if they either volunteer for different agencies or perform different services than they are otherwise employed to perform.

While your letter does not specifically address these issues, we will assume that the Fire Captain is volunteering for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation. Further, we will assume the Fire Captain is volunteering freely, with no direct or implied coercion by the employer. Finally, it is apparent from your letter that the Fire Captain is seeking to volunteer for the **Name***, also the employer.

The remaining question concerns whether or not the Fire Captain would be providing the same or similar services as those he or she is employed by the **Name*** to provide while performing services as a volunteer Chaplain.

A determination of whether the services that volunteers seek to provide are the "same type of services" they are employed to perform requires "...consideration of all the facts and circumstances in a particular case..." See 29 CFR 553.103(a). Among the facts the regulation states will be considered is how the volunteered services and the services which the volunteer is employed to provide are classified by the three digit categories of occupations in the Dictionary of Occupational Titles (DOT), published by the Employment and Training Administration (ETA). The DOT was recently superseded by the O*NET system, also published by ETA. Of equal weight to the DOT/O*NET, the Administrator will consider whether the volunteer services are "closely related to the actual duties performed or responsibilities assigned to the employee." Id.

Name* has established a volunteer Chaplaincy Program. Under the program, Chaplains normally serve as volunteers and not City employees. You have enclosed a copy of the **Name*** Police Department General Order 96-1, which establishes the Chaplaincy Program, and which the Fire Department applies to its similar program.



A Chaplain must be ecclesiastic certified or ordained by a recognized religious body, and he or she must have a church or substantial congregation within the jurisdiction. The Chaplain performs a variety of tasks in his or her service to the department and community. The Chaplain counsels employees at their request; officiates at events such as funerals, retirements and award ceremonies; visits sick and injured personnel; assists in making death and injury notifications to employee families; and provides training to employees and their families as needed. The Chaplain also provides liaison services to the religious community and to the broader community during crisis or emergency situations.

Fire Captains, on the other hand, perform a much different set of tasks. Typically, the Fire Captain directs firefighters and rescue personnel to the scene of a fire alarm; assesses and reports on conditions at the scene; and assumes command of the firefighting and rescue operations until relieved by a senior officer. In addition, the Fire Captain supervises activities at the fire station; conducts orientation and drills for firefighting personnel; inspects buildings, facilities and equipment to ensure compliance with fire codes; investigates fires; make presentations about fire safety to community groups; and may perform functions related to arson investigations.

Both the Dictionary of Occupational Titles and the O*NET contain descriptions of occupations that closely track those of Fire Captain and Chaplain. See DOT 373.134-010 Fire Captain; DOT 120.107-010 Clergy Member (which includes Chaplain); O*NET 33-1021.01 Municipal Fire Fighting and Prevention Supervisor; and, O*NET 21-2011.00 Clergy. It is clear after reviewing the job descriptions for Fire Captain and Chaplain you provided with your letter and the DOT and O*NET treatment of these occupational categories that a Fire Captain and Chaplain are not providing the same or similar services. Therefore, assuming the other two criteria are met for establishing that an individual is a volunteer, the **Name*** may allow the Fire Captain to volunteer without compensation as a Chaplain without violating the FLSA.

I hope you will find the above discussion and analysis responsive to your request. We stand ready to work with you at any time to support the wonderful spirit of volunteerism that sustains this country.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures

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