

Labor Department Opinion Letter on Firefighters and Volunteer Work

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210
FLSA2008-14
December 18, 2008

Dear Name*:

This is in response to your request for an opinion regarding whether a paid firefighter employed by a private, nonprofit volunteer fire department (VFD) may volunteer to perform duties similar to his or her paid duties for the same fire department during off duty hours at no pay. It is our opinion that the Fair Labor Standards Act (FLSA) * requires the combination of a firefighter's "volunteer" hours and regular hours of work, worked for the same employer, for purposes of calculating required minimum wage and overtime pay.

* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

You state that the VFD is a private, nonprofit corporation that furnishes fire protection services under contracts with several municipal governments. The VFD has full-time paid firefighters and volunteer firefighters who receive no pay. Funding is obtained from several public sources, including a millage property tax, fire protection insurance premiums distributed to fire protection districts, and a property owners' service charge attached to municipal water bills. The paid firefighters are compensated by the VFD from the millage property tax funds and a separate supplemental payment provided directly to each firefighter by the state.

According to the copy of the "Constitution and By-Laws" furnished, the VFD is governed by a board of nine directors elected internally by its members. The board has full authority over the VFD's operations, including acceptance of members, training requirements, promotions, and disciplinary actions, including terminations. Based on the information furnished, we agree that the VFD is a private, nonprofit organization and not a public agency for purposes of the FLSA.

Section 3(e)(4)(A) of the FLSA, 29 U.S.C. §203(e)(4)(A), permits public sector employees to volunteer their services to their employing public agency, assuming they provide their services for civic, charitable, or humanitarian reasons and there is no coercion or undue pressure on the employee, so long as they do not volunteer to provide the same type of services for which they are employed. The phrase "same type of services" means "similar or identical services." 29 C.F.R. §553.103(a). Although the FLSA does not include a similar provision for private, nonprofit employers, the Wage

and Hour Division applies this same policy in the case of employees of religious, charitable, or nonprofit organizations who donate their services as volunteers to their employing organization. See Field Operations Handbook §10b03(d). The time spent in volunteer work is not considered compensable under the FLSA provided there is no coercion or undue pressure on the employee and the services are not the same type of services as those for which the individual is employed by that organization. See *id.*; Wage and Hour Opinion Letter FLSA2005-33 (Sept. 16, 2005); Wage and Hour Opinion Letter April 12, 1996 (copy enclosed).

For example, office employees of a volunteer fire department may volunteer to provide firefighting services to the same department during off duty hours without being paid under the FLSA for this “volunteer” work, which is different in kind from the employees' regular duties. On the other hand, a regular office employee may not volunteer to perform similar office work arising from a special fund drive or other operations of the volunteer fire department without being compensated in accordance with the FLSA. See Field Operations Handbook §10b03(d). Thus, VFD firefighters may not work some shifts for pay and other shifts on a volunteer, unpaid basis in the manner proposed, because the volunteer and paid work consist of the same type of service. Thus, all hours worked on all shifts are compensable and need to be combined for FLSA purposes, and compensated in accordance with the Act. See Wage and Hour Opinion Letter FLSA2008-3NA (Feb. 29, 2008); Wage and Hour Opinion Letter FLSA2006-25NA (Dec. 1, 2006).

The Department of Labor strongly supports volunteerism and commends individuals who wish to volunteer their services. Even where there is no evidence of coercion, however, allowing paid employees of a nonprofit organization to perform the same type of services for their employer on an uncompensated, volunteer basis would in effect allow employees to waive their rights to compensation under the FLSA. The Supreme Court held that an employee may not waive his or her rights to compensation due under the FLSA. See *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945); see also Wage and Hour Opinion Letter FLSA2004-15 (Oct. 18, 2004).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues 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. We trust that this letter is responsive to your inquiry.

Sincerely,
Alexander J. Passantino
Acting Administrator