



FLSA2006-38

September 29, 2006

Dear **Name***:

This is in response to your request for an opinion concerning the application of the Fair Labor Standard Act (FLSA) to firefighters who wish to switch from part-time employee status to volunteer status.

In a conversation with a member of my staff, your office advised that the Fire Protection District (District) employs part-time paid firefighters who work 8 to 16 hours per week, in addition to other individuals who volunteer their time. These part-time firefighters are paid \$6.75 per hour and also work other part-time jobs in the community. Some of them eventually obtain full-time employment in fields other than firefighting and wish to continue their service with the fire department as volunteers.

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. With 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. *See* 29 C.F.R. § 553.101(a).¹ Under the legislative compromise that Congress reached in the 1985 FLSA amendments, however, 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." 29 U.S.C. § 203(e)(4)(A)(ii). Therefore, under the FLSA an employee of a public agency may volunteer without restriction to perform the same type of service for a different public agency, or may volunteer without restriction to perform a different type of service for the same public agency that employs him or her.

The FLSA and its implementing regulations do not preclude a firefighter who terminates part-time employment with a public agency from *later* assuming a volunteer firefighter position, provided that the firefighter:

1. Was not converted unilaterally by the employer to volunteer status in order to avoid the minimum wage provisions or overtime protection of the FLSA, *see Krause v. Cherry Hill Fire Dist.*, 969 F. Supp. 270, 277-79 (D.N.J. 1997);

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

2. Serves as a volunteer for civic, charitable, or humanitarian reasons without promise, expectation, or receipt of compensation, although expenses, reasonable benefits, or a nominal fee may be provided;
3. Offers service freely and without coercion, direct or implied, from the agency; and
4. Is not otherwise employed by the same public agency to provide the same services for which he or she volunteers.

See 29 C.F.R. § 553.101. These criteria should be applied on an individual basis to determine whether the circumstances indicate that a specific individual qualifies as a bona fide volunteer under the FLSA.

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 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,

Paul DeCamp
Administrator

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