



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2008-3NA

February 29, 2008

Dear **Name***:

This is in response to your letter to the U.S. Department of Labor regarding whether a driver employed by the Fire Company may also volunteer as a firefighter.

You advised my staff that the Fire Company is a non-profit organization governed by a board of directors elected by its volunteer members. You also advised that the driver in question is a trained firefighter and that his primary duty is driving fire trucks. In addition to driving fire trucks, the driver fights fires, responds to emergencies, maintains the fire equipment, and also maintains the Fire Company's building. For purposes of this response, we will assume there is Fair Labor Standard Act (FLSA) coverage for the employee in question.¹

An employee of a religious, charitable, or non-profit organization who donates services as a volunteer to such an organization in a capacity different from that in which the employee is employed is not considered engaged in compensable work under the FLSA. The Wage and Hour Division will not find that an employee/employer relationship exists for that different capacity. For example, office employees of a volunteer fire department may volunteer to provide fire-fighting services during off-duty hours as an act of charity. 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. Thus, under the FLSA, individuals who are paid firefighters may not work some shifts for pay and continue to work other shifts as a "volunteer" for the same employer. In such cases, the volunteer and paid work are in the same capacity, and all hours worked on all shifts are combined and compensable for FLSA purposes. *See* Wage and Hour Opinion Letters [FLSA2005-33](#); [FLSA2004-15](#).²

You raise several specific questions, which we address in the order presented in your letter.

Q1. "Is a paid employee (paid driver) also permitted to be an active firefighter in your organization?"

¹ For a discussion of FLSA coverage in a similar context, please see Wage and Hour Opinion Letter [FLSA2006-25NA](#).

² Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

A1. You clarified that you are asking whether a driver employed by the Fire Company to drive fire trucks, fight fires, respond to emergencies, maintain fire equipment, and maintain the Fire Company's building may volunteer as a firefighter after his regular 40-hour week for the same Fire Company. An employee cannot volunteer to perform the same services he is paid to perform for the same employer. The driver cannot volunteer as a firefighter after his regular 40-hour week of work; all time spent as a driver or firefighter is compensable hours worked. All hours worked, including overtime, must be paid in accordance with the FLSA. *See* FLSA2005-33; FLSA2004-15.

Q2. "If yes, is he/she eligible for overtime for the hours they spend volunteering outside of their normal 40 hour workweek."

A2. See A1.

Q3. "If the local municipality pays the employee to be employed by your Fire Company, does the answer to Q1 change?"

A3. The driver/firefighter would still be an employee of the Fire Company regardless of the source of the funds used to pay the employee's wages.

Q4. "Is there any 'grandfathering' of this clause?"

A4. There are no relevant grandfather provisions within the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and follow-up discussion with our staff 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,

Monty Navarro
Office of Enforcement Policy
Fair Labor Standards Team

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