

# Employee Volunteer Community Service: Compensable or Not?

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Many employers provide employees with the opportunity to participate in community service projects during their off-duty time, like mentoring youth, cleaning waterways, painting and repairing shelters, and building affordable housing.

Recently the U.S. Department of Labor's Wage and Hour Division issued Opinion Letter FLSA 2019-2. This letter explains when employee time spent on volunteer community service may and may not be "hours worked" under the Fair Labor Standards Act (FLSA), and therefore may or may not be payable to the employee, particularly when employees are eligible to receive a bonus for participating in a service project. These are the main takeaways from the letter:

*For employee volunteer time to not be compensable, the employer must avoid directly or indirectly coercing employees to participate.*

The letter states "Congress did not intend for the FLSA 'to discourage or impede volunteer activities' but rather to 'prevent manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to "volunteer" their services.' Indeed, the FLSA recognizes the generosity and public benefits of volunteering and allows people to freely volunteer time for religious, charitable, civic, humanitarian, or similar public services." (Citations omitted.) In other words, participation must be charitable and voluntary, free from undue pressure by the employer.

*The employer may not control or direct the volunteer work.*

An employer does not violate this requirement by tracking the time employees spend volunteering, according to the letter. But if the employer gives "specific instructions about what volunteer work" an employee "should do, or how he or she should do it, the time the employee spends following these instructions is hours worked under the FLSA."

*Notifying employees of a volunteer event and even encouraging them to participate is not in itself coercive.*

But if employees may “suffer adverse consequences in their working conditions or employment prospects” for not participating, such as “by receiving a monetary penalty or by being disqualified from participating in a bonus program,” then the employees’ time spent volunteering would likely be considered compensable.

*Offering a bonus for participation does not constitute coercion as long as the bonus is not guaranteed.*

An employer may consider employee volunteer activities when determining a bonus without converting volunteer time to compensable hours if a bonus is not guaranteed. The Labor Department found a bonus was not guaranteed where the employer that requested the opinion letter awarded a bonus to the group of volunteer employees with the “greatest community impact” and the group’s supervisor had discretion on how to divide the award among group members.

Based on Opinion Letter FLSA 2019-2, employers that want to make sure employee volunteer time spent outside of working hours does not count toward hours worked should remember these two general rules:

- Do not penalize employees for not participating in volunteer activities.
- Do not guarantee bonuses (or other monetary benefits) for participation.

Keep in mind that Department of Labor opinion letters address the requirements of the FLSA; in states with their own wage and hour laws, it is important to determine what state law says about whether volunteer time should be compensated.

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