

# Do I Have to Pay Employees to Attend Company-Sponsored Volunteer Events?

## Labor & Employment Law Update

on April 30, 2019

Company sponsored volunteer activities foster a positive corporate culture and can improve employee engagement and morale. On March 14, 2019, the U.S. Department of Labor issued an Opinion Letter that makes wage and hour compliance associated with corporate volunteer campaigns a bit easier. The Opinion Letter clarifies that employers are not required to pay non-exempt employees for volunteer time outside their normal work hours so long as participation is truly voluntary and the employer does not direct the volunteer activities. The DOL further confirmed that an employer can incentivize volunteering to a limited degree.

In general, an employer must compensate non-exempt employees for all the time they are required or allowed to work. Under federal Fair Labor Standards Act regulations, even time a non-exempt employee devotes to public and charitable causes is compensable if the employer requests the employee engage in the volunteer efforts, directs or controls the employee's efforts, or requires the employee to be on the employer's premises. However, time an employee voluntarily devotes to public and charitable activities outside of his or her normal working hours is *not compensable*. 29 C.F.R. § 785.44.

At issue in the recent opinion was a bonus paid to the group of employees whose volunteer efforts had the greatest community impact. Citing earlier opinions, the DOL said an employer may consider employee volunteer efforts as a factor in calculating bonuses without incurring wage liability for volunteer time outside of regular working hours so long as (1) volunteering is truly optional; (2) choosing *not to volunteer does not adversely affect working conditions or employment prospects*; and (3) *volunteering does not guarantee any employee a bonus*.

Of course, volunteer activities must benefit a public or charitable purpose. One cannot "volunteer" to benefit a for-profit company. Even nonprofit employers must be careful not to designate any time employees devote to their regular work duties as "volunteering." Employees of nonprofit organizations can only volunteer for that organization in a capacity that is distinct from their normally assigned tasks.

The opinion letter and this post address obligations arising under federal law only. States can and often do impose more stringent regulations so the requirements in your particular jurisdiction may dictate a different outcome. Moreover, the DOL opinion is limited to the particular circumstances presented.

So in general, under federal law, if your employees engage in company sponsored volunteer activities during work hours or time they would ordinarily be working, you must pay them for that time. You do not need to pay employees who voluntarily choose to volunteer outside of regular work hours. However, time an employee spends volunteering, even if outside regular work hours, can become compensable if participation is required by the employer, employees suffer adverse consequences for choosing not to participate, the employer directs or controls the employees in their volunteer activities, or those who participate are provided a direct guaranteed reward.

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