Holiday "Volunteer" Services Might Be FLSA Employment

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The holiday spirit moves many to volunteer for activities of a benevolent nature. An organization to which such individuals donate services should consider the possibility that they might be "employees" under the federal Fair Labor Standards Act. Getting this wrong could result in liability for back-wages, child-labor penalties, and other remedies.

General Principles

The U.S. Labor Department says that, under certain circumstances, the FLSA permits people to donate their time as non-employees for humanitarian, religious, charitable, or other public-service reasons. However, the person must do this on a genuinely voluntary basis and without expecting or receiving wages. DOL has also said that, in all but "rare" situations, its policy is to limit volunteer status to qualifying activities for non-profit entities.

Relevant factors can include things like whether the person's services:

♦ Are truly done for altruistic motives;

♦ Are of a kind typically associated with volunteer work;

♦ Are less than a full-time occupation for the person;

♦ Do not displace employees or impair employment opportunities;

♦ Involve only "nominal" or "minimal" control by the recipient of the services; and/or

♦ Typically occur at times convenient to the person.

DOL maintains that the FLSA does not allow employees to volunteer to their employer unpaid services which are the same as, similar to, or related to their normal duties. With limited exceptions, DOL takes the same position even when an employee provides different services of a public-service or charitable nature that are done at the employer's request, under its direction or control, or during the employee's normal working hours.

Holiday Activities As FLSA "Employment"

A U.S. Wage and Hour Division opinion letter (reproduction linked below) illustrates that unpaid efforts donated even by people who are not otherwise employees can sometimes run afoul of the FLSA. A company planned to offer gift-wrapping services to customers during the weeks leading up to Christmas. This was to be done on the company's premises.

The services had previously been provided by temporary employees. However, non-profit community and church groups said that their members would volunteer to wrap gifts in the hope that the company would donate money to the groups. The company would not control the members' hours; would not supervise them directly; would maintain only general conduct rules; and would permit the volunteers to use its restrooms and breakrooms.

The Division concluded that the members would be FLSA employees rather than volunteers. The Administrator observed that the individuals' efforts would be rendered to a profit-seeking entity, rather than to any community or religious program. In her view, the members intended to contribute money to their organizations and were simply selling their services to the company in order to earn those sums.

As this shows, it can be unclear whether a relationship is one of volunteerism rather than FLSA employment. Practically speaking, the organization receiving a person's services bears the risk of being incorrect in viewing activities as noncompensable volunteerism. This might seem to be unfair, but it reflects a philosophy that the FLSA does not allow the risk to fall upon individuals whom the law is intended to protect.