

FLSA-1308

September 11, 1995

This is in response to your inquires concerning the application of the Fair Labor Standards Act (FLSA) to "volunteering" by employees of a for-profit employer. We regret the delay in responding to your inquiry.

As you know, we have a longstanding policy of limiting volunteer status to those individuals performing charitable activities for not-for-profit organizations. On a rare occasion, we have considered as volunteers, and not employees, individuals who perform activities of a charitable nature for a for-profit hospital, where the hospital does not derive any immediate economic advantage from the activities of the volunteers and there is no expectation of compensation. However, we have never opined that employees of for-profit hospitals may perform activities for their employers, and we decline to do so here.

You also ask about volunteers with respect to organizations that provide hospice services to the terminally ill. You state that there is an apparent conflict between FLSA and the medicare provisions of the Social Security Act (SSA) (42 U.S.C. 1302 et seq.). The latter [specifically, 42 U.S.C. 1395x(dd)(2)(E)(i)] defines a "hospice program," in part, as an organization that "utilizes volunteers in its provision of care and services."

We do not believe that the SSA repeals the FLSA by implication with respect to volunteers. Nor do we believe that the SSA necessarily creates a conflict with our policy on volunteers under the FLSA. We see no reason to treat hospice volunteers differently than volunteers in a hospital situation. Therefore, the Wage and Hour Division will not assert an employment relationship between a for-profit hospice and individuals who volunteer their services to perform activities of a charitable nature, such as running errands, sitting with patients so that a family may have a break, and going to funerals. We consider these types of activities to have humanitarian and, for some, religious implications, and are what the Supreme Court was referring to when it mentioned "ordinary volunteerism" in Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290 (1985).

On the other hand, individuals may not donate their services to hospices to do activities such as general office or administrative work that are not charitable in nature. Moreover, with respect to those individuals already employed by a hospice, they may not "volunteer" their services to the hospice.

You have also asked a general question about whether employees of a for-profit organization may donate their service without compensation for activities such as staffing a booth at a function where the employer displays its goods or services, or working as a guide during an employer's "open house." The answer to this question is no. Employees may not donate their services to their for-profit employers.

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator