

FLSA-1322

July 18, 1996

This is in response to your letter requesting an opinion within the meaning of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259 (1985) on behalf of your client, a mail order company offering general merchandise to the public through a catalog. You are seeking an opinion as to the application of the Fair Labor Standards Act (FLSA) to groups who wish to "volunteer" their services to your client.

You state that your client, in an effort to provide enhanced customer service, offered gift-wrapping services to customers in the four to six-week period preceding the 1995 Christmas season by utilizing temporary employees. The gift wrapping must be done on the premises of the client so as not to slow the delivery process.

Your client is again considering offering gift-wrapping services during the 1996 pre-Christmas holiday season. Several non-profit community and church groups have offered to provide volunteer members to do the gift-wrapping for your client. These groups have also expressed a hope that your client would donate a sum of money to the group; and one or more of the groups have suggested that the donation be equated to a per package amount. Your client does not plan to control the hours of the volunteers, will not directly supervise them, will only establish general rules of conduct, and will permit use of restrooms and breakroom facilities to the volunteers. Furthermore, your client believes that these volunteers do not fall within the definition of employees under the FLSA and, thus, feels no obligation to pay them directly for their time worked.

Please note that we have a longstanding policy of limiting volunteer status to those individuals performing charitable activities for not-for-profit organizations. In order for the FLSA to apply, an employment relationship must exist. The FLSA defines the term "employ" as including "to suffer or permit to work." However, the Supreme Court has made it clear that the FLSA was not intended "to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another." In administering the FLSA, the Department of Labor follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable, and similar not-for-profit organizations which receive their services.

It is our opinion that the groups in question would be employees of your client and not volunteers, as discussed above. Their services would not in themselves contribute to community or religious programs; instead the services are going to a profit-seeking

company. It makes no difference that the groups have agreed that payment should go to their community organizations or churches. The groups intend to contribute an amount of money, not services, to their organizations. The groups are selling their services to your client in order to earn that money. Therefore, your client would be responsible for complying with the monetary provisions of the FLSA, as discussed in the enclosed "Handy Reference Guide to the Fair Labor Standards Act."

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator

Enclosure