

FLSA-1325

August 2, 1996

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to volunteer firefighters who serve the *** Fire Department and whom your Department subsequently hires as paid firefighters. We regret the delay in responding to your inquiry.

You state that in order to be hired as a paid firefighter an individual must first be an unpaid volunteer firefighter before the individual can take the "test for firefighter." There is no other way for an individual to become a paid firefighter except by being an unpaid "volunteer" firefighter. Under these circumstances, you ask whether hiring firefighters from the "volunteer" ranks only and requiring them to work free would be considered a violation of 29 CFR §553.101(c).

The short answer is yes. As indicated in §553.101 an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons without promise, expectation or receipt of compensation for services rendered is considered to be a volunteer. An individual "volunteering" in order to obtain paid employment would not be a volunteer within the meaning of §3(e)(4)(A) of the FLSA and 29 CFR §553.101. We conclude that the practices described above are not in accord with §3(e)(4) and 29 CFR §553.101 and violate the FLSA.

In enacting §3(e)(4), Congress was concerned about the potential for abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to "volunteer" their services. See Senate Report No. 99-159, October 17, 1985, page 14, 2 U.S. Cong. News, page 662 ("the Committee wishes to prevent any manipulation or abuse of minimum wage requirements through coercion or undue pressure upon employees to `volunteer'").

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator