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‘Tis The Season For Public Sector Employers And Volunteers: What’s The Give And Take?

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During the holiday season, people’s thoughts turn to performing charitable acts and giving back to their communities. For public sector employers, now is the time when volunteers become plentiful. However, public sector employers must be cautious that they do not take any action which could turn a volunteer into an employee under the wage and hour laws.

Specifically, when accepting volunteer services, employers must not run afoul of the Fair Labor Standards Act (FLSA), the federal law which governs payment of the majority of employees in the United States. Generally speaking, public sector employers can accept volunteers, however, there is one important exception. Public sector employers may not allow their own employees to volunteer to perform additional work for their employer without compensation.

Initially, to be considered a volunteer, an individual must be performing services for civic, charitable or humanitarian purposes. The services must be entirely voluntary, with no direct or indirect pressure by the employer to volunteer, no promise of advancement for volunteering and no penalty for not volunteering.

If the answer to any of the below FLSA test questions is yes, then the individual is not a volunteer, but must be paid:

- Are the activities predominantly for the individual’s own benefit?
- Does the individual impair the employment opportunities of others by performing work that would otherwise be performed by regular paid employees?
- Does the volunteer provide services that are the same as services provided by a paid employee?
- Do the activities take place during the individual’s regular working hours as scheduled overtime hours?
- Is the volunteer time insubstantial in relation to the individual’s regular hours?

Although an employer need not pay a volunteer, a volunteer can be paid a nominal fee or expenses. The Federal Department of Labor generally considers a nominal fee to be payment of less than 20% of the amount that otherwise would need to be paid to hire someone full-time to perform the same services (the 20% rule). The nominal fee must not be tied to productivity. Some examples of expenses which may be paid to volunteers include: a uniform allowance or reimbursement for cleaning expenses; reimbursement for tuition, transportation and meal costs to attend volunteer training classes. In addition, volunteers can be provided with books, supplies or other materials necessary for volunteer training.

Finally, it is important to note that the FLSA forbids private sector employers from accepting volunteer services.

And remember the old adage—it’s always better to give than to receive.

Attorney

- Stephanie D. Gironda