

# Must You Pay Employees for 'Encouraged' Volunteer Work?

**Issue:** Some employer compensation plans provide financial incentives for employees' community volunteer work.

**Risk:** If you pressure employees into charity work or trip over other FLSA rules, you may have to pay for those volunteer hours.

**Action:** Structure such volunteer-incentive plans carefully, following the new Labor Department ruling explained here.

Employers like having good corporate citizens on staff, so they often encourage their workers to become involved in community activities.

Some even link employee compensation, in part, to volunteer participation. That can be a slippery slope, but such employers can take heart from a new Labor Department opinion letter.

It says that you don't need to pay nonexempt employees for time spent working on volunteer civic events, such as building Habitat for Humanity houses, even if your organization encourages such activities and links them to the organization's incentive-pay plan.

The new Labor letter says you don't have to pay employees for that volunteer time as long as employee participation is optional and nonparticipation won't affect a person's compensation or working conditions.

The case dealt with a Tennessee utility that rewarded performance bonuses based, in part, on an employees' community volunteer work. Labor says the volunteer time isn't compensable because, "the employer never requires the employees to volunteer ... and the right or expectation of continued employment is not affected by an employee's decision to participate. The volunteer work in question is performed outside of normal working hours. If the employees were to perform volunteer work during normal working hours, with prior approval, they would be compensated for this time."

Also, the employer's bonus plan was structured in such a way that employees could still achieve the highest performance bonus without performing any volunteer activities.

Labor cautioned that volunteer activities must be voluntary, saying, "Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time."

Read the opinion letter (FLSA 2006-4) at [www.dol.gov/esa/whd/opinion/flsa/htm](http://www.dol.gov/esa/whd/opinion/flsa/htm).

## Volunteer work and the FLSA: 4 questions

To determine whether the Fair Labor Standards Act requires you to pay nonexempt workers who volunteer, ask yourself the following four questions. If you answer "No" to any of the questions, your organization is likely on the hook to pay the employee for the "volunteer" time.

1. Will the employee perform the activities without expecting pay or substantial benefit?
2. Are the services performed without employer coercion or threat of penalty?
3. Are the activities predominantly for the employee's own benefit (not the employer's)?
4. Is the activity conducted at times other than normal working hours?