

May we ask employees to 'volunteer' their time?

Q. We are considering asking our employees to donate some time back to the company as a way to save costs and avoid having to lay off anyone. By “donate time” I mean working one or more hours per week without pay. Is this legal?

A. Under federal wage-and-hour laws, an hour worked must be an hour paid. Requiring hourly employees to work an hour without pay violates the law.

For private employers, there is no such thing as a volunteer employee. All work hours must be paid hours. The Department of Labor specifies: “When an employer directs an employee to volunteer, that time is compensable.”

Instead of asking employees to work for no pay, consider asking them to take a cut in pay equal to the number of “volunteer” hours you need per week.

For example, assuming a 40-hour workweek, and one “free” hour per week, simply deduct one hour of pay per week and then divide that total weekly wage by 40 to obtain the new reduced hourly rate.

There are two important caveats: (1) the hourly rate can never fall below the minimum wage (\$7.30 in Ohio); and (2) an overtime premium must still be paid for any hours worked in excess of 40 in any week.