

Winnebagoland UniServ Update

325 Trowbridge Drive, Fond du Lac WI 54937

Legal Implications of “Donating” Your Time

On occasion WU hears of members who work beyond their paid, contractual day out of obligation to their job. The employee wants to do the job right, or the job simply cannot be done within the paid day, and they are not allowed to work overtime. There are legal implications to doing this. According to the Fair Labor Standards Act (FLSA) – Due to the possibility of coercion to perform unpaid services, paid employees may not volunteer to perform the same type of services for their employer that they are normally employed to perform.

Put simply, employees who are paid by the hour cannot donate their time to their employer or “volunteer” to work for their employer performing regular job duties for which they are normally compensated. All hourly employees must be compensated for hours actually worked in their regular positions.

Under FLSA regulations the following rules apply to “volunteer” activities:

- Compensation is required if the employer request the activity, directs the activity, or controls the activity;
- Compensation is not required if the activity is truly voluntary and outside the employee's regular hours;
- Professional employees cannot donate time on a non-compensable basis in their field if the employees' employer is involved;
- If the employer is not involved at all, a professional employee need not be compensated for his or her voluntary activities.

Employees are considered volunteers only if:

1. The event for which they are volunteering occurs outside the usual workday;
2. Participation is completely voluntary; and
3. The employees are not performing the kind of work they are paid by the employer to regularly perform

The third prong is critical. If “employees volunteer to do the same type of work that they perform as part of their normal work duties, the volunteer work must be included in the employees’ hours worked calculations.” The employer would be responsible for any compensation (including overtime) for those and other hours worked that pay period.

Under certain circumstances, professional and hourly employees may volunteer time. Hourly employees may volunteer for work outside the regular duties and regular hours, and professional employees may volunteer for work outside their regular duties. Volunteer services must be both (a) offered freely and without pressure or coercion, direct or implied, from the employer, and (b) performed for civic, charitable or humanitarian reasons.

Before you consider “donating” your time to your job, keep in mind the legal implications. And be sure to contact WU if you are being asked to do so or if you have other questions.

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