

Know the difference between compensable and volunteer time.

## When Volunteering Isn't Voluntary

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CREDIT UNION employees are generous folks who often help at charitable, civic, and humanitarian events. It's not surprising, since the movement

long has embraced a people helping people philosophy that attracts like-minded people.

Sometimes these events include promotions of credit union products and services or tasks similar to job functions. When should you treat these efforts as volunteerism, and when do they count as hours worked, subject to wage payment laws?

What matters is whether the employee is exempt or nonexempt. If you've classified employees properly under the federal Fair Labor Standards Act (FLSA) and applicable state law as exempt executive, administrative, professional, or outside salespeople, you don't have to differentiate between volunteering versus working. It doesn't matter from an FLSA standpoint.

It matters a lot, however, if the employee is nonexempt, because FLSA requires nonexempt employees to be paid at least minimum wage for any time the employer "suffers or permits" them to work. In addition, employers must pay nonexempt employees at 1.5 times their regular pay rate for overtime (time exceeding 40 hours in one workweek). Thus, it's crucial to differentiate between time volunteering versus working for nonexempt staff.

The Labor Department recognizes people may volunteer time to organizations on their own initiative and not be covered by the FLSA (Opinion Letter FLSA2006-4).<sup>1</sup> These

activities ordinarily aren't "work" for FLSA purposes.

Typically, volunteers serve part time and don't perform work employees would do. FLSA regulations say "time spent in work for public or charitable purposes at the

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employer's request, or under the employer's direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked" (29 CFR 785.44).

As a rule, volunteering during normal working hours is compensable, unless the choice to volunteer truly is based on employees' initiative. Any indirect or direct coercion to participate outside of work hours negates the voluntary nature of participation. An employer requiring, directing, or requesting employees to use lunch or work time to volunteer must compensate them for it.

The FLSA doesn't prevent credit unions from sponsoring events that

create volunteer opportunities. You may encourage employees to volunteer for these events outside of working hours without the credit union incurring an obligation to treat the time as hours worked—so long as participating is optional and nonparticipation won't adversely affect conditions or employment prospects. However, a "significant connection" between an employer and a charity "may be found to be a single enterprise," requiring the employer to pay employees for hours worked for the charity.

Employees who promote credit union products and services at an event likely don't fit the FLSA criteria of "performing a religious, charitable, or other community service." Similarly, employees performing tasks similar to regular job functions at a community event, which employees attend at the employer's suggestion, creates an inference the employees aren't truly volunteering.

"Time spent...controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business must be paid in accordance with the minimum wage and overtime requirements of the FLSA," says the Labor Department.

Carefully review volunteer activities on a case-by-case basis to determine if participating employees truly are volunteering versus working. Be sure to comply with any state law that's more protective of employees than FLSA. Unless the criteria for volunteerism are clearly met, treat the activity as compensable time. ☉

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<sup>1</sup> [www.dol.gov/esa/WHD/opinion/flsa.htm](http://www.dol.gov/esa/WHD/opinion/flsa.htm)