

Employees Who Volunteer Their Services...Is it Legal?

It is not uncommon with nonprofits to have employees willing to volunteer to work additional hours at no pay. For many who work at a local church or charity the work is as much about commitment as it is the money. No doubt you can think of all kinds of examples where this may occur, like the; paid administrative assistant to the youth pastor who is also a “volunteer” at youth events (i.e. camps, retreats, or short-term mission trips), clerk in the accounting department who volunteers her time on the worship team, or the facilities staff person who runs the parking lot team on the weekends.

Consequently, when a job needs to be done, many employees will simply put in however much time is needed to get the job done, because that’s what you do when you are in ministry.

But when these employees are being paid on an hourly basis or they otherwise meet the federal and/or state definition of a non-exempt employee, employers can sometimes find themselves in violation of the law if such unpaid activity is allowed to occur.

Over the last several years, more and more lawsuits have been filed against employers concerning compensation for “off-the-clock” work. The crux of these lawsuits generally flow from employers who failed to properly compensate non-exempt employees for time spent performing work for the employer either before or after their scheduled shift, during a meal time, or otherwise. Employees who believe they were not properly paid can allege violations of the Federal Fair Labor Standards Act (FLSA) and/or their State’s Labor Code. At the federal level, the U.S. Department of Labor’s Wage and Hour Division (WHD) conducts investigations of federal wage-and-hour violations. At the state level, such as California, the Labor Commissioner’s office generally investigates and enforces the state’s labor laws.

Whether filed as an individual complaint or a class-action lawsuit the penalties to employers found to have violated the law can be substantial. Settlements in the hundreds of thousands or even millions of dollars are not unheard of.

Train Managers to Prevent Unauthorized Work

An employer’s liability for unpaid overtime for off-the-clock work is generally limited to those instances where the employer has knowledge (actual or constructive) that an employee worked overtime. If a supervisor knows that employees are working additional hours and not recording the time, and those employees are not being paid for those hours, from a legal perspective the supervisor will have now exposed the employer to a potentially significant liability if an employee or a group of employees decides to file a lawsuit.

Your supervisors and managers are your first line of defense against any type of labor related lawsuit. Making sure they are doing their jobs is in your best interest.

If an employer doesn’t know that an employee worked overtime and the employee fails to notify the employer or deliberately prevents the employer from learning of the overtime work, then the employer’s failure to pay the overtime related to off-the-clock work may not amount to a legal violation. The logic being that an employer needs to have the opportunity to comply with its overtime obligations and it can’t do so if the employee is withholding information or otherwise not informing the employer of all hours being worked.

Best Practices

Consider the following when creating policies and practices prohibiting off-the-clock work:

- Be specific about what you mean by “off-the-clock work,” such as no checking emails at home, no performing work in the morning before logging in and no running work errands after logging out.
- Look at how your employees work and let them know exactly what you mean by off-the-clock work.
- It’s not enough to merely have a policy prohibiting off-the-clock work or unauthorized overtime: Supervisors should regularly check in with employees to ensure that they are not performing off-the-clock work.
- If you learn an employee worked off-the-clock in violation of the policy, you should report the off-the-clock work to HR as a disciplinary matter, or if you are HR note the violation in the employee’s file and consider what action may be called for by policy.
- Train supervisors to not permit or encourage off-the-clock work. Supervisors who violate your policy can, and should, be subjected to discipline as well if they allow such activity to occur.
- Examine any company practices that tie department budgets or supervisor rewards to not incurring overtime or keeping labor hours low. There may be underlying reasons behind the practice that can be changed to help avoid encouraging off-the-clock work.
- Consider special issues relating to remote workers and take action as appropriate to curb the behavior.

When Can Employees Volunteer at their Place of Employment

Because there are situations where it is legal for employees to turn around and volunteer time at their employer, you need to be aware of the rules that govern this activity. Currently, it is legal for any paid employee of an organization to volunteer their time at the same organization provided the activities they are volunteering for are not directly or indirectly related to the area or duties they have been hired to perform.

Thus, the administrative assistant in the youth department who volunteers at youth events, likely would need to be compensated for the additional time “volunteered.” The clerk in the accounting department who volunteers her time on the worship team, however, can legally do so without having to be compensated. The facilities staff person who “volunteers” to run the parking lot team on the weekends might need to be paid for their time if the activity is included in their job description or it has been otherwise made known to them that they are expected to perform the work as part of their duties (whether written or otherwise).

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