



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, D.C.

LABOR AND EMPLOYMENT BULLETIN

December 6, 2005

DOL PROVIDES GUIDANCE ON DEFINING “VOLUNTEERS”

When an employee “volunteers” to perform charitable work in addition to his or her normal duties, employers are faced with issues such as whether the time spent performing the charitable work constitutes compensable hours worked for the employer under the Fair Labor Standards Act (“FLSA”), and whether employees may be paid a stipend for their charitable contributions without the stipend being considered as wages. Recently, the Department of Labor issued opinion letters that provide guidance on these issues.

General Factors to Determine Volunteer Status

Volunteer work that is conducted outside the employee’s normal hours and is different from the employee’s normal duties will not be counted as compensable time worked by the employee. Conversely, if the volunteer work is conducted during the employee’s normal business hours or is substantially similar to the employee’s usual duties, the time is compensable.

In addition, the “volunteer” status of an employee is conditioned on these factors: (a) whether the employer unilaterally converted the employee to volunteer status for the period of time in order to avoid minimum wage or overtime requirements; (b) whether the employee volunteered for civic, charitable, or humanitarian reasons without promise, expectation or receipt of compensation; and (c) whether the employee performed the services freely and without coercion, direct or implied from the employer.



Nominal Fees or Stipends

The FLSA permits an employer to pay an employee a nominal fee or stipend for volunteer work, as long as the fee or stipend is not a “substitute for compensation” or “tied to productivity.” If the fee varies depending on the amount of time spent by the employee performing the charitable activity or the success or failure of the charitable activity, then the fee is more likely to be viewed as “tied to productivity.” In order to be considered a nominal fee or stipend, the fee should be at least 20% less than the cost of hiring someone to perform the same activity.

For further information, please feel free to contact us.

L A B O R A N D E M P L O Y M E N T C O N T A C T S

BIRMINGHAM, AL

Leslie M. Allen
205.226.3484
lallen@balch.com

David R. Boyd
205.226.3485
dboyd@balch.com

Douglas B. Kauffman
205.226.8758
dkauffman@balch.com

N. DeWayne Pope
205.226.3421
dpope@balch.com

Lisa J. Sharp
205.226.8714
lsharp@balch.com

M. Jefferson Starling, III
205.226.3406
jstarling@balch.com

HUNTSVILLE, AL

David B. Block
256.512.0105
dblock@balch.com

JACKSON, MS

R. Pepper Crutcher, Jr.
601.965.8158
pcrutcher@balch.com

Armin J. Moeller, Jr.
601.965.8156
amoeller@balch.com

David M. Thomas, II
601.965.8157
dthomas@balch.com

E. Russell Turner
601.965.8159
rturner@balch.com

ATLANTA, GA

Cary Ichter
404.760.3502
cichter@balch.com

T. Joshua R. Archer
404.760.3556
jarcher@balch.com

MONTGOMERY, AL

David R. Boyd
334.269.3132
dboyd@balch.com

W. Pete Cobb, II
334.269.3128
pcobb@balch.com

Charles B. Paterson
334.269.3143
cpaterso@balch.com

John G. Smith
334.269.3150
jgsmith@balch.com

Dorman Walker
334.269.3138
dwalker@balch.com

The Labor & Employment Bulletin is published as an informational resource for clients and friends of Balch & Bingham, LLP. It is not a solicitation to perform legal services. No representation is made that the quality of legal services performed by Balch & Bingham LLP is greater than the quality of legal services performed by other lawyers.

