

Wage and Hour Division, Labor

§ 553.106

§ 553.102. Similarly, a firefighter cannot volunteer as a firefighter for the same public agency.

(c) Examples of volunteer services which do not constitute the "same type of services" include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter; and an office employee of a city hospital or other health care institution who volunteers to spend time with a disabled or elderly person in the same institution during off duty hours as an act of charity.

§ 553.104 Private individuals who volunteer services to public agencies.

(a) Individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof, as discussed in § 553.106. There are no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies.

(b) Examples of services which might be performed on a volunteer basis when so motivated include helping out in a sheltered workshop or providing personal services to the sick or the elderly in hospitals or nursing homes; assisting in a school library or cafeteria; or driving a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer as firefighters or auxiliary police, or volunteer to perform such tasks as working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987]

§ 553.105 Mutual aid agreements.

An agreement between two or more States, political subdivisions, or interstate governmental agencies for mutual aid does not change the otherwise volunteer character of services performed by employees of such agencies pursuant to said agreement. For example, where Town A and Town B have entered into a mutual aid agreement related to fire protection, a firefighter employed by Town A who also is a volunteer firefighter for Town B will not have his or her hours of volunteer service for Town B counted as part of his or her hours of employment with Town A. The mere fact that services volunteered to Town B may in some instances involve performance in Town A's geographic jurisdiction does not require that the volunteer's hours are to be counted as hours of employment with Town A.

§ 553.106 Payment of expenses, benefits, or fees.

(a) Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

(b) An individual who performs hours of service as a volunteer for a public agency may receive payment for expenses without being deemed an employee for purposes of the FLSA. A school guard does not become an employee because he or she receives a uniform allowance, or reimbursement for reasonable cleaning expenses or for wear and tear on personal clothing worn while performing hours of volunteer service. (A uniform allowance must be reasonably limited to relieving the volunteer of the cost of providing or maintaining a required uniform from personal resources.) Such individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.

(c) Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them

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to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of such individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

(d) Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plans or "length of service" awards, commonly or traditionally provided to volunteers of State and local government agencies, which meet the additional test in paragraph (f) of this section.

(e) Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and must not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal: The distance traveled and the time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

(f) Whether the furnishing of expenses, benefits, or fees would result in individuals' losing their status as volunteers under the FLSA can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.

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Subpart C—Fire Protection and Law Enforcement Employees of Public Agencies

GENERAL PRINCIPLES

§ 553.200 Statutory provisions: section 13(b)(20).

(a) Section 13(b)(20) of the FLSA provides a complete overtime pay exemption for "any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be."

(b) In determining whether a public agency qualifies for the section 13(b)(20) exemption, the fire protection and law enforcement activities are considered separately. Thus, if a public agency employs less than five employees in fire protection activities, but five or more employees in law enforcement activities (including security personnel in a correctional institution), it may claim the exemption for the fire protection employees but not for the law enforcement employees. No distinction is made between full-time and part-time employees, or between employees on duty and employees on leave status, and all such categories must be counted in determining whether the exemption applies. Individuals who are not considered "employees" for purposes of the FLSA by virtue of section 3(e) of the Act (including persons who are "volunteers" within the meaning of § 553.101, and "elected officials and their appointees" within the meaning of § 553.11) are not counted in determining whether the section 13(b)(20) exemption applies.

(c) The section 13(b)(20) exemption applies on a workweek basis. It is therefore possible that employees may be subject to maximum hours standard in certain workweeks, but not in others. In those workweeks in which the section 13(b)(20) exemption does not apply, the public agency is entitled to