

FLSA-12

August 10, 1978

This is in reply to your correspondence of July 19, 1978, requesting an opinion concerning volunteers under the Fair Labor Standards Act.

In the situation you describe a retail company is approached by representatives of a charitable foundation. The organization offers to supply volunteers to perform without any compensation the company's inventory. The foundation will provide the volunteer workers in return for a \$1,000 donation from the retail establishment. None of the volunteers are employed by the foundation but are persons who wish to donate their time to help the foundation raise money for its charitable purposes.

The Fair Labor Standards Act is the Federal law of most general application concerning minimum wage and overtime pay standards. This Act applies to persons who are engaged in covered work for their employer. Individuals are volunteers when, for example, they donate their services to a religious, charitable or similar nonprofit organization for civic or personal motives of their own, without promise or expectation of compensation, at hours that suit their own convenience, whether by schedule or otherwise, and who do not replace regular employees in the performance of their normal duties. The activity may be performed on the employer's premises as long as the control exercised by the employer is only nominal. However, individuals who perform work for a private commercial company, business or corporation are generally regarded as employees who are subject to the Act's pay standards unless excluded by specific exemption. A discussion of the Department's position with regard to volunteer services is contained on page 5 of the enclosed copy of WH Publication 1297.

The volunteers in this case are not the type described in the enclosed bulletin. The service is to be provided to a private commercial business by individuals who will perform the inventory. This work would displace regular employees. It appears that there would be sufficient control exercised by the company to render it as the employer of these volunteer employees. Therefore, these employees must be paid at least a minimum wage of \$2.65 an hour and overtime pay of one and one half times the regular rate of pay for all hours over 40 in the workweek unless otherwise exempt.

If you have any further questions please feel free to contact this office at any time.

Sincerely,

William G. Blackburn, Chief
Branch of Wage and Hour Standards

Enclosure

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