



VOLUNTEERING VERSUS EMPLOYMENT

US federal immigration regulations define an employee as someone who performs services “for wages or other remuneration “[8 CFR 274a.1(f)], including monetary reimbursements or food. The guide is the US Fair Labor Standards Act of 1938, as amended.

The US Department of Labor uses Section 3(e)(4) of the FLSA to determine what constitutes a volunteer. The following guidelines apply:

1. Are the services performed for civic, charitable or humanitarian purposes?
2. Are the services entirely voluntary, with no direct or indirect pressure by the employer, with no promise of advancement and no penalty for not volunteering?
3. Are the activities predominately for the individual’s own benefit?
4. Does the individual impair the employment opportunities of others by performing work that would otherwise be performed by regular, paid employees?
5. *Does the volunteer provide services that are the same as services provided by a paid employee?*
6. Is there no expectation of compensation either now or in the future for these services?
7. Do the activities take place during the individual’s regular working hours or scheduled overtime hours?
8. Is the volunteer time insubstantial in relation to the individual’s regular hours?

The US Department of Labor provides the following guidance for religious, charitable, and nonprofit organizations, schools, institutions, and volunteer workers in Section 10b3 of their Field Operations Handbook (10/20/93):

In many cases, the nature of religious, charitable and similar nonprofit organizations and schools allows individuals to volunteer their services in some capacity, usually on a part-time basis, but not as employees or with the expectation of pay for services rendered; for example:

- Members of civic organizations may help out in a shelter or workshop
- Civic organizations may send members or students into hospitals or nursing homes to provide personal services for the sick or the elderly
- Parents may assist in a school library or cafeteria as a public duty to maintain effective services for their children
- Parents may drive a school bus to carry a football team or band on a trip
- Individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross
- Individuals working with children with disabilities or disadvantaged youth
- Individuals helping in youth programs as camp counselors, scoutmasters, or den mothers
- Individuals providing child care assistance for needy working mothers
- Individuals soliciting contributions or participating in benefit programs for such organizations
- Individuals volunteering other services needed to carry out their charitable, educational, or religious programs.

The activities outlined above, performed under such circumstances, do not create an employee-employer relationship.

However, for immigration purposes, US immigration authorities MAY consider any position, if normally occupied by a paid employee or worker, as "employment," even if uncompensated (Matter of Hall, 18 I & N Dec. 203 (BIA 1982)).