

Our County is finalizing a volunteer policy. One of my co-workers was asked to consider doing her job as a volunteer. This way she wouldn't have to get doctor's permission in order to go back to work. Please help me find justification to explain why this is wrong due to doing same work as a volunteer and not needing doctor's clearance to return to work as does need under her current classification as an employee. I did check to see that a volunteer risk management company states that volunteers can't do the same work as employees, but more justification might tip the balance in favor of the County reconsidering their policy.

**Thank you,
Lorraine Zeller**

I received your message via NAVPLG about your employee wanting to volunteer in the same capacity as his/her paid role. Please lean on your HR Director and the FLSA for this; your HR department should be not only discouraging it, but prohibiting it. Here is the key language from the US Department of Labor:

When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community with but one exception - public sector employers may not allow their employees to volunteer, without compensation, additional time to do the same work for which they are employed. There is no prohibition on anyone employed in the private sector from volunteering in any capacity or line of work in the public sector.

Here is the link to the whole section:

<http://www.dol.gov/elaws/esa/flsa/docs/volunteers.asp>

Hope this helps!

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There are two issues here: You are correct, the employee cannot do the same work as a volunteer per the Fair Labor Standards Act; and if she needs a medical clearance for work--she should also need one to do volunteer work. Your volunteer program should have the same standards as that for paid employees.

I have retired employees volunteering for me. They are not doing any duties that resemble in any way what they did for our agency when they were a paid employee.

When you start placing volunteers in jobs once held by paid employees, you are opening yourself up for legal issues.

Barbara Grostick
Volunteer & Community Resource Coordinator
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You are correct – this is an FLSA situation. If she can't do her job full time, maybe her doctor can give her an ok to work part-time. But I WOULD NOT let this person volunteer in her assigned position. Also, if she wanted to volunteer in a different position, I would ask for a doctors release as well.

Robin Popik, Plano, TX

In answer to your question. It is a Fair Labor Standards Act violation to allow a person to volunteer at the same job as they receive pay for. We follow that very strictly in our program. Our staff is not allowed to volunteer unless it is in a very different capacity as they are paid ex: our city manager does coach a junior basketball team. The city was sued many years ago by one of our inspectors who volunteered his time to inspect homes and then decided he didn't want to volunteer any longer so he sued for back pay at an overtime rate and won!!! We are careful, now!

Bonnie Pittl
Kettering, OH

My advice to this person is to get a legal opinion from County counsel. This seems like a legal/HR question that should have some back up and then can be written down for future questions like this. It needs to be codified in some way. Government legal advisors tend to be conservative on things like this and they also will have the weight necessary for management staff to abide. If there is already a county policy about this (there very well might be in HR already) then that can be referenced.

Cory Bytof
City of San Rafael Volunteer & Sustainability Programs

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You are correct that the situation Lorraine is talking about would be a violation of the Fair Labor Standards Act. We have to be very careful to not let a paid staff person volunteer for a job that is even similar to what they are paid to do.

Barbara Dean
Arlington, VA

In the City of Tualatin we use the same guidelines as in the employee policies. We carry Workman's Comp on volunteers; so we make sure we are providing safe and reasonable work environment.

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