

DOL Opinion Letter Allows Employee Incentive Programs for Community Service Work

PUBLISHED ON

March 15, 2019

The Fair Labor Standards Act permits employee incentive programs, including the potential for a monetary award, for participation in community service activities, [according to a new communique from the U.S. Department of Labor](#).

As long as employers are not directing or controlling employee's activities during the program, the employer may use a mobile device application to track participation in the volunteer program, according to the opinion letter.

The DOL specifically approved the following practice:

An employer provides an optional community service program, under which employees engage in volunteer activities either the employer sponsors or the employees themselves select. The employer compensates employees for the time spent on these volunteer activities during working hours or when they are required to be on the employer's premises. However, employees volunteer off premises outside their normal working hours, as well. At the end of the year, the employer rewards the group of employees with the greatest "community impact" with a monetary award, and the winning group's supervisor decides how to distribute the award among the employees. The number of hours each employee volunteers may be a factor in the supervisor's decision. The employer also uses a mobile device application to track each participating employee's volunteer hours.

The opinion letter notes that, to pass muster, the community service program must be truly voluntary and charitable, and nonparticipation cannot have an adverse effect on the employee's working conditions or employment prospects. An employee cannot be guaranteed a bonus for volunteering, as guaranteed payment would suggest that the volunteer hours were "hours worked" under the Fair Labor Standards Act. Likewise, using a mobile tracking device to direct employees—for example, by giving specific instructions about what volunteer work the employee should do—would result in a finding that the work was compensable under the act.

Barley Snyder's [Employment Practice Group](#) regularly counsels employers regarding incentive programs and FLSA matters. Please [contact me](#) or any member of the group for assistance.

:



Joshua L. Schwartz

Partner

Tel: (717) 399-1535

Email: jschwartz@barley.com