

Appreciating Volunteers: How Much is Too Much?

05.07.15 | Linda J. Rosenthal, JD



Over the past ten years, at almost every presentation we've given to nonprofit practitioners, they've asked whether organizations may provide gift cards or other "stipends" to volunteers to convey appreciation.

Typically, the attendees are surprised to learn that giving even small amounts may, in certain circumstances, lead to harsh unintended consequences.

Worker Classification

Volunteers are a great asset to nonprofits, but there are risks as well as rewards.

In *Volunteers: A Primer of Possible Perils*, we debuted Valerie Volunteer and Ed Executive-Director in a morning of mishaps and mayhem. Valerie and Ed meandered through a mess of them — risks, that is — apparently oblivious of any lurking dangers.

The first mishap popped up in the first paragraphs of that tale: "A startup community organization — let's call it Organization X — is welcoming an energetic college student on summer break The young woman is offering her time, but drops hints that she could certainly use a few bucks an hour, if possible."

Of course, the "... Executive Director of Organization X is ecstatic that he's getting some much-needed office help. To Valerie Volunteer's delight, she's not assigned to envelope-licking duty, but is asked to tackle the nonprofit's fledgling social media presence...."

What's the problem here? It's an issue of classification. Is Valerie Volunteer a "bona fide volunteer" if she gets a few bucks an hour? Maybe not.

Who decides how people involved with your organization are classified? Here's the rub; it's not you. There are laws and regulations, rules and tests. You can call someone a "volunteer" until the cows come home, but you may be stepping into a big pile of manure if you get it wrong. How big? Quite big, indeed. Big penalties; big liability.

Definition of Volunteer

"What is a "volunteer"? Regardless of the label chosen by the organization and the worker, if the worker is not a true 'volunteer,' then all labor and other laws pertaining to employees must be followed. This includes payment of at least minimum wage and overtime rates, observance of meal- and rest-break rules, and anti-discrimination standards." It can also mean loss of important immunity otherwise available under the federal Volunteer Protection Act."

According to the U.S. Department of Labor, a volunteer is: an "individual who performs hours of service ... for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered."

There are additional ways to spot a true nonprofit/volunteer relationship:

- the worker performs services typically associated with volunteer work;
- the worker doesn't displace any regular employees
- the activity is less than full time; and
- the services are truly voluntary, and not offered as a result of any pressure or coercion; for instance, an employee who is asked to "volunteer" extra time

The cornerstone of the volunteer/organization relationship, of course, is "service without contemplation of pay."

But many nonprofits want to give their volunteers "a little something" as thanks for their dedication, time, and effort: stipends, reimbursement for out-of-pocket expenses, discounts on services, gift cards, and in-kind benefits.

The law acknowledges this reality and allows "bona fide volunteers" to receive "nominal" or *de minimis* compensation or a "stipend" along with reimbursement for expenses and reasonable benefits. But what's "nominal?" How much is too much?

Acceptable Stipends

There's no definitive answer to what is an allowable stipend, but there are some clues in the federal regulations under the Fair Labor Standards Act and some opinion letters issued by the Department of Labor.

The FLSA is the federal law that governs and defines classification of workers, including who is an "employee" or a "volunteer" or an "intern." The DOL is the federal agency that administers the FLSA.

According to information on the DOL website, “[a]lthough a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee (or any combination) to perform ... services.”

Further, “...a fee is not nominal if it is a substitute for compensation or tied to productivity.” And “... determining whether the expenses, benefits or fees would preclude an individual from qualifying as a volunteer under the FLSA requires examining the total amount of payments in the context of the economic realities of a particular situation.”

The Department of Labor “presumes that fees paid to volunteers are nominal as long as the fee does not exceed twenty percent of what an employer would otherwise pay to hire a full-time employee for the same services.”

But – and this is a big “but” – if the “volunteer” receives anything of value exceeding \$500 a year, that person must be treated as paid staff or as an independent contractor. Complications to the person of being considered an independent contractor instead of a volunteer include: (a) relinquishing important liability protection under the federal Volunteer Protection Act; and (b) becoming liable for self-employment taxes.

According to the IRS, in a phone forum on January 24, 2014 titled “Good Governance Makes Sense for Exempt Organizations,” even \$25 gift cards provided to volunteers are “taxable events.”

What is a “taxable event”? Stipends or cash gifts of any amount (even allowable “nominal” stipends to bona fide volunteers) are generally taxable income. The volunteer recipient must report the amounts on his or her tax return and pay applicable taxes. And the organization must withhold taxes and make FICA payments – just as it does for employees.

Practitioner Tips

So where does that leave the nonprofit practitioner? A few helpful tips:

- Don't Tie Stipends or Benefits to Hours of Work: That looks too much like a prohibited “substitute for compensation.” A test to help evaluate whether a payment to a volunteer is a compensation substitute is “whether the amount of the fee varies as the particular individual spends more or less time engaged in the volunteer activities.”
- Don't Base Classification Solely on Your Financial Means: A person doing what would ordinarily be considered employee-type work doesn't magically become a volunteer because you can't afford to pay.
- Don't Offer Benefits That Regular Employees Receive: You should differentiate the volunteer as much as possible from employee status and compensation.
- Know the effect of your appreciation gifts: The last thing you want to do is make your organization's withholding obligations greater, or to “gift” your amazing volunteer with a more complex tax obligation at the end of the year.

By allowing “nominal” stipends, the law recognizes that nonprofits routinely show appreciation to their volunteers with small amounts of money or benefits.

The Fair Labor Standards Act recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to bona fide volunteer efforts for charitable and public purposes. In this spirit, in enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities are neither impeded nor discouraged. But those lawmakers also wanted to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements in 'volunteer' situations.

Conclusion

Any decision to reward volunteers must be approached with due care and consideration. In addition to "nominal" cash stipends, bona fide volunteers can safely receive reasonable in-kind benefits and reimbursement of expenses.

But that's another kettle of fish that we'll tackle in a later post. There are some tricky twists and turns.

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