

Question Presented: Can a secretary who volunteers to be a majorette sponsor be paid a stipend and not violate FLSA?

1) The first question to answer is whether the secretary may be a volunteer.

Section 3(e)(4)(A) of the FLSA, permits public sector employees to volunteer their services to their employing public agency, assuming they provide their services for civic, charitable, or humanitarian reasons and there is no coercion or undue pressure on the employee, so long as they do not volunteer to provide the same type of services for which they are employed. The phrase "same type of services" means "similar or identical services." Therefore, since the employee is volunteering to be a majorette sponsor and she is currently employed as a secretary, she may be a volunteer.

2) How much of a stipend should she be paid?

Under the FLSA, a public agency volunteer cannot receive any compensation, but may be paid "expenses, reasonable benefits, or a nominal fee, or any combination thereof. However, the nominal fee cannot be a substitute for compensation or tied to productivity. As a general rule, a fee paid is nominal as long as it does not exceed 20 percent of the amount that otherwise would be required to hire a permanent employee for the same services.

Therefore, the secretary should be paid a nominal fee (monthly/per semester) for her volunteering as a majorette sponsor. We also suggest that the secretary

should sign a statement that she is volunteering her services and that she understands she will receive no compensation for the services provided. She should agree in the statement that she is fully aware that she can stop performing the duties at any time without any repercussions regarding her paid position.