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This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Be Careful of Best Intentions: Volunteer Stipends During the Season of Giving

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With year end closely approaching and the holiday season upon us, nonprofits may be looking for ways to thank their local volunteers. PBPO often receives questions about how a nonprofit may recognize a volunteer's time through stipends without jeopardizing their volunteer status. Generally, nonprofits can provide a reasonable stipend to volunteers, however, they need to be careful that a gift of thanks doesn't become a headache of misclassification.

Employee vs. Volunteer

Before nonprofits offer a stipend, including items such as gift cards, they should evaluate whether the stipend is appropriate for the volunteer's service. A well-intentioned stipend could be viewed as compensation, which may convert a volunteer into an employee under federal law. Misclassifying employees as volunteers can be a costly mistake, including the nonprofits' obligation to employee back pay and social security contributions, among other liabilities.

Two federal laws are worth considering in this context, first, the Fair Labor Standards Act (FLSA), which broadly regulates minimum wage and overtime requirements, and the Volunteer Protection Act of 1997 (VPA), which generally limits an individual's liability when participating in volunteer activities.[1,2] Applying both laws and their expectations of volunteers can inform a nonprofit's approach to stipends.

The Department of Labor (DoL) provides helpful guidance when evaluating nonprofit volunteers under the FLSA. In general, the DoL considers nonprofit volunteers as individuals who freely, and without compensation, volunteer for public service, religious or humanitarian objectives, on a part-time basis. The volunteer should not perform the services of the nonprofits' employees and if the nonprofit operates a commercial activity, such as a cafe, the individual should not volunteer for those services.

Similarly, under the VPA, a volunteer is an individual who performs services for a nonprofit and does not receive compensation (other than reasonable expense reimbursement) or anything of value which exceeds $500 per year.[3]

[1] 29 USCA §201 et seq (FLSA)
[2] 42 USCA §14501 et seq (VPA)
[3] 42 USCA §14505(6)

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Pulling It Together

A Gift of Thanks or Compensation?

Under the FLSA and VPA, volunteers cannot receive compensation for their services. The question of what amounts to compensation is a complicated topic; however, by applying the VPA definition and related DoL opinion letters, nonprofits can offer a reasonable stipend to volunteers provided the stipend represents:

> **Expense reimbursement**. Volunteers may be reimbursed for their costs incurred while volunteering for the nonprofit, such as travel and meal expenses.
>
> **A nominal fee**. As a general matter, the DoL considers a fee nominal when the amount does not exceed 20% of what an organization would pay another employee to perform the services.
>
> **Don't forget the VPA.** In calculating stipend amounts, keep the VPA definition of "volunteer" in mind. Remember, the VPA allows nonprofits to reimburse volunteers for reasonable expenses incurred, but it specifies that volunteers cannot receive "any other thing of value in lieu of compensation, in excess of $500 per year"[4].

Giving Thanks

Before offering volunteers a stipend for their service, give volunteers and your organization a greater gift, peace of mind. Nonprofits should evaluate their volunteer stipends periodically to ensure they are appropriate to the volunteer's service and not compensation. This will ensure that you, and your volunteers, end the year well and look forward to a productive New Year!

Need Legal Advice?

If you are a PBPO client and would like more information, have questions regarding donations of specific items such as vehicles or property, or would like to discuss creating a gift acceptance policy for your organization, contact PBPO at info@pbpohio.org or (513) 977-0304.

Not a Client? Apply to become a PBPO client by submitting a Request for Legal Assistance form online, or contact us at info@pbpohio.org.

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[4] 42 USCA §14505(6)

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