

# Wage & Hour Insights

*Guidance & Solutions for Employers*



## **Employee Volunteers and Emergency Call-Ins [Webinar Q&A]**

By Bill Pokorny on October 14, 2011



Another in our series of answers to questions from our [September 28 webinar on wage and hour law in higher education](#):

**Q.** What if a non-exempt employee truly volunteers his/her time on a weekend to participate in a campus clean-up program (non-exempt duties) or a ticket taker at homecoming? Are these hours non-compensable? Similar, situation, a weekend event and a storage room was locked. The only employee with a key was non-exempt and she was called on a Saturday night to drive in and open the door then leave. Was any of the time (inclining travel time) compensable?

**A.** In both cases, it depends. Employee civic and charitable work may be non-compensable if all of the following factors are present:

- The employee offers his or her services freely, with no pressure or coercion, direct or implied.
- The work is conducted completely outside of the employee's regular working hours.
- The work is performed with no promise or expectation of compensation.
- The work is of a different type than the employee's paid work.

So, to take the example of the campus cleanup program, suppose the program takes place on a Saturday afternoon and employee participation is completely voluntary. Bob normally works as an administrative assistant in the Dean's office Monday through Friday. So long as he clearly understands that he won't be paid and is not being pressured to participate, his work for the campus clean-up program could likely be treated as unpaid. However, Sally, who works as a groundskeeper, would likely have to be paid if the campus clean-up work is comparable to her usual job duties. Likewise, James, who works in food service on Saturday afternoons, would likely have to be paid because the program occurs during his regular working hours.

In the second scenario, the primary issue is not whether the employee's time at work is compensable, but whether she is entitled to pay for her travel time. Normally an employee's time commuting from home to work and back is not compensable. However, when an employee is called out after hours to return to their regular worksite, the [DOL's regulations](#) say that it "takes no position" as to whether the travel time must be paid:

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There may be instances when travel from home to work is overtime. For example, if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers all time spent on such travel is working time. The Divisions are taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

As a practical matter, if this is really a one-off scenario the amount of money at issue is likely minimal. If the employee has to commute a substantial distance, it might be worth paying her as a sign of appreciation for disrupting her weekend. However, if the employee lives five minutes from campus or if offering pay in this situation would lead to abuse (like friends frequently forgetting their keys), there seems to be little legal risk in taking the position that the time is not compensable.

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