



FLSA2018-22

August 28, 2018

Dear **Name***:

This letter responds to your request for an opinion concerning the applicability of the Fair Labor Standards Act (FLSA) to “member examination graders” (Graders) who “travel either domestically or from abroad to the United States once a year for a one- to two-week period to grade a global credentialing examination” for your client, a nonprofit organization. Specifically, your client asks whether it may treat the Graders “as volunteers instead of... short-term employees” if the Graders do not receive a fee for their services going forward. The opinion below is based exclusively on the facts you have presented. You have represented that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating, or for use in any litigation that commenced prior to your request.

BACKGROUND

Your client is a nonprofit organization that administers professional examinations necessary to obtain professional designations (credentials). Each year, your client selects approximately 650 credential-holders who are members of the organization to serve as Graders for one or two weeks. Your letter states that Graders are motivated to serve due to the “professional achievement of being selected for this role,” as well as the opportunities to “[promote] the highest standards of ethics, education, and professional excellence,” to “[gain] the personal and professional” benefits of being a Grader, to “give back to the profession,” and to “give back” to your client. In the most recent survey that your client conducted, Graders most commonly cited the last two reasons—giving back to the profession and giving back to your client—as their motivations for serving as Graders. Your letter also states that the Graders “tend to be the most successful and highly compensated individuals in their professions” and are often “highly compensated executives of multi-national firms” who take “a week or more of their personal vacation, or other leave time” to serve as Graders.

Your client pays for the Graders’ transportation, accommodations, and meals while they serve as Graders. Your client has previously also provided Graders a flat fee for their services, but plans to stop paying this fee and classify the Graders as volunteers going forward.

GENERAL LEGAL PRINCIPLES

The FLSA recognizes the generosity and public benefits of volunteering and allows people to freely volunteer time to religious, charitable, civic, humanitarian, or similar nonprofit organizations as a public service. WHD Opinion Letter FLSA2006-18, 2006 WL 1836646, at *1 (June 1, 2006). Such a person is not ordinarily an employee under the FLSA if he or she volunteers without contemplation or receipt of compensation. *Id.* Of course, the volunteer must offer his or her services “freely without coercion or undue pressure,” direct or implied, from an

employer. *Id.*; see 29 C.F.R. § 553.101(c); cf. *Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761, 767 (6th Cir. 2018) (“The type of coercion with which the FLSA is concerned is economic in nature, not societal or spiritual.”).

OPINION

Your letter suggests that the majority of your client’s members who previously received a flat fee to serve as Graders would continue to serve as Graders for the various service-oriented reasons outlined in your letter, including giving back to the profession and others. In addition, Graders are typically highly compensated executives who continue to receive their regular salaries from their primary employers. They travel from their home locations to serve as Graders, and do so only once per year for no more than two weeks. These and other factors outlined above indicate that Graders offer their services freely and without pressure or coercion. For purposes of this discussion, we assume that you correctly characterize the Graders’ motivations.

As your client will not pay any fees to the Graders going forward, the Graders would perform their services solely for the service-oriented reasons identified in your letter, and without contemplation of compensation. Your client could continue to pay for Graders’ travel, lodging, meals, and other expenses incidental to volunteering without negating their volunteer status. See WHD Opinion Letter FLSA2005-6NA, 2005 WL 5419042, at *1-2 (Aug. 26, 2005).

In sum, based on the facts provided, it is our opinion that your client could properly classify Graders as volunteers under the FLSA going forward. We trust that this letter is responsive to your inquiry.

Sincerely,



Bryan Jarrett
Acting Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).**