

Student “Volunteers” in An Academic Setting

Volunteers can be a great benefit and they are not uncommon at universities. But they also present liability issues.

A much discussed issue currently is the possible application of the federal Fair Labor Standards Act (FLSA) to a volunteer. Sometimes a university student will volunteer to work without pay in a university laboratory in order to gain experience in a particular field. Or, a high school student may wish to work on an unpaid basis with a faculty member on a research project because of the anticipated benefit to be received from the experience. These kinds of volunteers are often termed “interns” and are allowed to work on campus under a formal or informal “internship” program. A formal internship program often carries with it academic credit upon completion of the term, which is typically limited to a semester or term, whereas an informal arrangement does not and is often shorter in duration.

Under the FLSA, an intern will either be classified as a “learner/trainee,” in which case no compensation need be paid, or an “employee,” in which case compensation at the minimum wage rate, at least, must be paid. FLSA regulations provide six criteria that are to be considered in making the learner/trainee vs. employee determination. These criteria are, generally, as follows: 1.) the training experience is similar to that received in a vocational school (that is, “hands-on”), 2.) it is for the benefit of the student, 3.) the employer derives no “immediate advantage” from the student’s activities, and in fact its operations may be “impeded,” 4.) the student does not displace regular employees but works under close supervision, 5.) the student is not necessarily entitled to a job at the end of the training period, and 6.) both the employer and the student understand that the student is not entitled to wages for the time spent in training. The Department of Labor website explaining these criteria states that “if *all* of the following criteria apply, the trainees or students are not employees within the meaning of the Act” (emphasis added). Whether an affirmative answer to less than all of the six questions will yield a “learner/trainee” status is not clear, though it is often said that as long as the arrangement looks more like a training and learning experience than a job, the intern will not be regarded as an employee. Discussion of the features of a proposed “volunteer student” arrangement with the Office of Counsel and Human Resources may be helpful in avoiding a FLSA violation.

Several other issues relate to the classification of the volunteer as an employee or non-employee. For example, if a volunteer is injured while doing performing the volunteer work, is he or she entitled to any benefits from the University? UAH has an Employee Occupational Injury Policy that provides medical and other benefits to employees injured while at work. By its terms, however, it does not apply to volunteers. An injured volunteer may decide to pursue a tort claim for losses arising out of his/her injury. The University will have available the defense of sovereign immunity in any such suit, and though UAH officials and employees also enjoy a limited immunity defense, they are clearly more attractive potential defendants to plaintiffs’ lawyers in this situation.

Another liability issue relates to injury to a third party (such as another student, a visitor to the campus) caused by the actions of a volunteer. In order to encourage volunteerism, there is

a federal statute, the Volunteer Protection Act, which attempts to shield volunteers from personal liability to third parties. Alabama also has the Volunteer Service Act, which is intended to accomplish the same objective. The result can be that, since the volunteer will be immune from any claim growing out of the accidental injury to the third party, attention will be shifted to the University and its individual employees, as potential defendants in the injured person's lawsuit. While the University would assert that it is not responsible for the actions of a volunteer, the injured third party may argue that the volunteer is acting as an agent of the University or a UAH employee, and that the employee should therefore be liable. The third party may also claim that the volunteer was not properly supervised by a University employee and that this constitutes actionable negligence on the part of that employee.

A possible immigration issue also exists. If the volunteer is in the United States because his/her spouse is here on a student visa or a work visa, the volunteer is precluded from work, even uncompensated work. Information on the immigration status of the volunteer and, possibly, the volunteer's spouse may be needed. Apparently, this issue has come up fairly often on other university campuses.

Most often questions arise about volunteers in a short-term, informal arrangement (rather than a more formal internship program) context. These arrangements can be very beneficial to the student volunteers. The considerations recited above do not necessarily preclude a department or faculty member from proceeding with the volunteer proposal. If the circumstances of the proposed arrangement do not involve significant risks of injury to the student volunteer or to others, and if it is clear that the student is a "learner/trainee," then it may be acceptable. Even in this case, however, a release should be prepared and signed by the student volunteer defining the relationship, making it clear that no compensation will be provided by the University, and releasing the University and its employees from any claims. The Office of Counsel can prepare, upon request, such a release. If the student is a minor, of course, his/her parent(s) will need to execute the release document.

If there are any questions, please contact the Office of Counsel for assistance.