The volunteer sector is regulated by various complex laws.

The Fair Labor Standards Act (FLSA), a federal law, governs the wages and hours of employees but does not define “volunteer.” The U.S. Department of Labor (DOL) enforces the FLSA. The DOL recognizes the status of volunteers and has issued various opinion letters outlining what it deems are permissible versus impermissible activities for volunteers. These opinion letters are not binding on a court but may be given some deference, depending on the court.

In California, the Division of Labor Standards Enforcement enforces state wage and hour law. It generally follows the DOL definition of “volunteer.”

Under federal and state law, there is a presumption that the individual is an employee rather than a volunteer and the burden is on the employer to prove volunteer status.

A memorandum addressing the factors involved in determining whether an individual is properly classified as an employee or a volunteer is available to CAHHS members only at www.calhospital.org/memo/fair-employment-and-housing-act-feha-amendments-covering-interns-and-volunteers.

Volunteer “work rule” policies should be written to minimize organizational risk while meeting the mission of the hospital.

Organizations should consider the potential liability for volunteers acting as their agents. Volunteer leaders who write “work rule” organizational policies based solely on recommendations and information from their peers in the volunteer sector may place their organizations at risk. It is recommended that hospitals consult with risk management and/or counsel to develop “work rule” policies based on organizational interpretation of:

1) FLSA
   DOL Opinion Letters on Volunteers are available at www.dol.gov/whd/opinion/flsa.htm.

2) California Wage and Hour Law
   For more information, go to www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm to find opinion letters touching on this subject.

3) Organizational Considerations
   a. Insurance policies
   b. Union agreements
   c. Regulatory agency requirements, such as California Department of Public Health, as well as accrediting organizations, such as The Joint Commission
   d. Culture
   e. Needs

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