

**Resolution 04-08-2009**

Labor Law: Definition of “Volunteer”

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Labor Code sections 30, 1285.1, and 1390.1 and to amend Labor Code section 1171 as follows:

1    § 30

2           “Volunteer” means an individual who, without promise or expectation of  
3 compensation, but solely for his or her personal purpose or pleasure, performs work for a  
4 corporation qualified under Section 501(c)(3) of the Internal Revenue Code (Title 26, United  
5 States Code Annotated) as a tax-exempt organization.

6  
7    § 1171

8           The provisions of this chapter shall apply to and include men, women and minors  
9 employed in any occupation, trade, or industry, whether compensation is measured by time,  
10 piece, or otherwise, but shall not include any individual rendering services as a volunteer,  
11 any individual employed as an outside salesman or any individual participating in a national  
12 service program carried out using assistance provided under Section 12571 of Title 42 of the  
13 United States Code.

14           Any individual participating in a national service program pursuant to Section 12571  
15 of Title 42 of the United States Code shall be informed by the nonprofit, educational  
16 institution or other entity using his or her service, prior to the commencement of service of  
17 the requirement, if any, to work hours in excess of eight hours per day, or 40 hours per week,  
18 or both, and shall have the opportunity to opt out of that national service program at that  
19 time. Individuals participating in a national service program pursuant to Section 12571 of  
20 Title 42 of the United States Code shall not be discriminated against or be denied continued  
21 participation in the program for refusing to work overtime for a legitimate reason.

22  
23    § 1285.1

24           The provisions of this chapter shall not apply to any individual rendering services as a  
25 volunteer.

26  
27    § 1390.1

28           The provisions of this chapter shall not apply to any individual rendering services as a  
29 volunteer.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Sacramento County Bar Association

**STATEMENT OF REASONS:**

Existing Law: Provides no definition of “volunteer” for individuals who wish to donate their time to non-profit organizations.

This Resolution: Establishes the definition of “volunteer” for individuals who wish to donate their time to non-profit organizations.

The Problem: Many believe that individuals may lawfully provide services as volunteers in California for non-commercial operations of non-profit organizations, but such is not the case under current state wage and hour law. Indeed, throughout the state, many non-profits rely on volunteer services for their very existence. Without the charitable donations of time from volunteers, myriad non-profits would cease to exist. However, because state law provides no definition of “volunteer” for those donating their time to non-profits, much depends on the vagaries of the administration in power to determine how these situations will be treated under state law.

Without a clear definition, an individual’s right to participate in any number of activities, including participation in humanitarian activities, performing arts events, and other civic and/or charitable projects, will continue to be chilled and countless groups throughout the state will suffer, or simply cease to exist. Thus, a uniform definition of “volunteer” is needed to provide clarity and certainty to non-profits and volunteers throughout the state.

Recently, the state legislature has partly addressed this problem by establishing a statutory exemption from the prevailing wage laws for volunteer participation in public works projects. Labor Code section 1720.4 allows for unpaid volunteers on public works projects, which includes construction, demolition, or repair work done under contract and paid, in whole or in part, out of public funds. One example: Every fall, the American River Parkway Foundation in Sacramento (which receives government grants) leads a massive, citizen-powered clean-up of the regional park. In 2007, more than 1,000 volunteers turned out to remove more than 20,000 pounds of trash. These individuals were considered volunteers under section 1720.4, passed in 2004 and extended in 2008, exempting volunteers from wage requirements otherwise associated with government-financed projects. The Parkway could not continue its annual clean-up project if it were required to pay all of its volunteers minimum wage, which it, like so many nonprofits, simply cannot afford to do. (See, Weintraub, *Legislature Toying with Civic-Minded Volunteers*, *The Sacramento Bee* (Apr. 1, 2008) p. 7B.) However, section 1720.4 only applies to public works projects and is only temporary at that, as it is currently set to sunset on January 1, 2012.

No similar law allows for volunteers to perform services without compensation for non-profit organizations not involving public works projects. If volunteer participation is considered appropriate for public works projects, then certainly civic and charitable minded individuals should similarly be allowed to donate their time to non-profits of their choice.

The proposed definition comes directly from the United States Supreme Court’s definition of “volunteer” (see, *Tony & Susan Alamo Foundation v. Secretary of Labor* (1985) 471 U.S. 290, 295) and the definition of “volunteer” adopted by the state legislature in Labor Code section 1720.4.

**IMPACT STATEMENT:**

This resolution does not affect any other law, statute, or rule.

**AUTHOR AND/OR PERMANENT CONTACT:** Kelly L. Borelli, Employment Law Counsel, LLP, 9630 Bruceville Road, Suite 106-297, Elk Grove, CA 95757; voice (916) 833-3216; fax (916) 714-4995; email [kborelli@emlawco.com](mailto:kborelli@emlawco.com)

**RESPONSIBLE FLOOR DELEGATE:** Kelly L. Borelli