

No Money, No Problems?

Legal and Policy Considerations Governing
Unpaid Collaborators at UNC Charlotte

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Objectives

- Discuss the Fair Labor Standards Act's Requirements for Volunteering at UNC Charlotte
- Consider Additional Legal and Related Issues for Engaging Different Types of Volunteers
- Summarize Best Practices for Engaging Volunteers
- Talk through scenarios involving volunteers to address common pitfalls

Request for Volunteers: Case Study #1

Ellen, the Director of Ethics, Policy, and Compliance, is preparing to make a presentation to the Board of Trustees. She believes it would be helpful to practice the material in front of a live audience so she can get feedback in real time. The Office of Ethics, Policy, and Compliance sends out a request for volunteers to meet in the conference room on Saturday morning to observe the presentation and provide feedback.

Michelle, a paralegal who works for the Office of Ethics, Policy, and Compliance, has no plans for Saturday and would like to volunteer. Ellen tells her that she'd love to have her help out, but not to feel pressured or obligated.

Given these circumstances, would it be appropriate to allow Michelle to "volunteer" in this way?

Request for Volunteers: Case Study #1

- A. Yes, because her decision to volunteer is voluntary and she is not pressured or unduly influenced.
- B. No, because her job duties involve providing support for the Office of Ethics, Policy, and Compliance.
- C. I don't know

Voluntold? Case Study #2

John works in the Cato College of Education. He also learns of the Office of Ethics, Policy, and Compliance's call for volunteers. His supervisor suggests that John should volunteer after work the upcoming Friday after reminding him that he has an upcoming performance review.

Would it be appropriate for John to “volunteer” to provide an audience for Director of the Office of Ethics, Policy, and Compliance?

Voluntold? Case Study #2

Would it be appropriate for John to “volunteer” to provide an audience for the attorneys?

- A. Yes, because John is not required to perform that service as part of his job.
- B. No, because his supervisor pressured John to volunteer.
- C. I don't know.

“The Law That Changed The American Workplace”

The Fair Labor Standards Act (“FLSA”) is a federal law that establishes certain, basic protections for employees in the United States on a full-time or part time basis, including:

- Minimum wage;
- Overtime pay;
- Recordkeeping requirements; and
- Child labor standards



FLSA Exemptions

- To be considered exempt from the FLSA, an employee must be paid a salary and perform exempt job duties.
- Employees in higher education that are considered exempt include:
 - Teachers;
 - Professors;
 - Coaches;
 - Professional Employees;
 - Administrative Employees;
 - Executive Employees;
 - Graduate Teaching Assistants; and
 - Student Residential Assistants.

FLSA Implications for Volunteers

- Under the FLSA, an employee is defined as someone who “suffers” or is “permit[ted]” to work—this is a broad definition.
- The FLSA was intended to prevent the unfair treatment of workers, but not to prevent people from freely volunteering their time for “charitable and public purposes”.

The Volunteer Exemption

- A person who performs work for a public agency (including UNC Charlotte) is considered a volunteer if they satisfy the following elements:
 - **“Perform ... service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered”;**
 - Offer services **“freely and without coercion, direct or implied”;** and
 - **“Are not otherwise employed by the same public agency to perform the “same type of services” as those volunteered.**
 - *Typically, a volunteer provides services on a part-time basis and does not displace an employee.*

Outside the Norm: Case Study # 3

Norm is a student at UNC Charlotte who works part time as the school's mascot. One of his job duties is to travel to away basketball games to cheer on the team. In exchange for performing this service, Norm receives an hourly wage. Norm is a big Charlotte soccer fan and offers to attend the soccer games and cheer on the team for free. He even offers to use the same routines and equipment from the basketball games.

Can Norm volunteer for this activity?



Outside the Norm: Case Study #3

- A. Yes, if he signs a volunteer agreement.
- B. No, because Norm is already paid to cheer at UNC Charlotte basketball games.
- C. I don't know

Great Student: Case Study # 4

Great Student is high school student. He hopes to be employed as a biology researcher one day. Great Student reaches out to one of the biology professors at UNC Charlotte to ask if he could volunteer some hours during the summer to help her with her research. He believes this opportunity would allow him to get some exposure in the field and determine whether he'd like to begin pursuing it seriously. The faculty member has no intern or assistant and would love to have Great Student's help. She wants to offer him an unpaid internship which would involve weekly homework assignments for academic credit.

Can Great Student volunteer in this capacity?



Great Student: Case Study #4

- A. Yes, Great Student can volunteer.
- B. No, Great Student cannot volunteer.
- C. I don't know

Test for Unpaid Internships

- Whether the intern and employer understand that there is no expectation of compensation or a job because of the internship;
- Whether the internship provides educational training (e.g., clinical or hands-on training);
- Whether the internship is tied to the intern's formal education program (e.g., by assignments or academic credit);
- Whether the internship corresponds to the intern's academic calendar;
- Whether the internship's duration is limited to the period during which the intern is actually learning; and
- Whether the intern's work complements or displaces paid employees.

Extended Stay: Case Study #5

Harold is studying at UNC Charlotte on a Student Visa from The University of Nairobi. During his last semester, Harold was helping a faculty member with a research project. He completed his course work and graduated a month ago but the faculty member would like him to continue working on the project for a couple of weeks to help wrap things up. You are asked to advise on whether it would be okay for Harold to keep assisting with the research project for the next couple of weeks.

Is it permissible for Harold to volunteer to continue performing this research after he has graduated?

Extended Study: Case Study #5

- A. Yes, Harold can volunteer because he is no longer student who is studying at UNC Charlotte.
- B. No, Harold cannot volunteer.
- C. I don't know

Super Good Spouse: Case Study #6

Dr. Pretty Good was recently hired at UNC Charlotte with a J-1 visa. His very talented spouse, Dr. Super Good, has come with him on a J-2 visa. Although she was excited at first, Dr. Super Good is tired of staying at home and wants to volunteer in a lab where her expertise will be valued. There is a research opportunity at UNC Charlotte.

Is it permissible for Dr. Super Good to volunteer?

Super Good Spouse: Case Study #6

- A. Dr. Super Good can volunteer because there are no concerns.
- B. Dr. Super Good cannot volunteer because there are concerns.
- C. I don't know.

Understanding the Background: Case Study # 7

Amy is a student at Wake Forest University who grew up in the area. She hears of Charlotte's Camps on Campus for children in elementary school, middle school, and high school. She loved going to camps as a kid and would very much like to volunteer to supervise some of the children as a camp counselor. The camp coordinator approaches you because he'd like to have her volunteer but is unsure if that would be okay. How should you advise him?



Understanding the Background: Case Study # 7

A. Because she can be legally considered a volunteer, there are no concerns as long as she signs a volunteer agreement.

B. Although she can be legally considered a volunteer, there are some concerns. However, you do not need to follow the same types of procedures that would be necessary if Amy was a new hire.

C. Contact Risk Management and Human Resources



Important Considerations for Engaging Volunteers

- Does the volunteer opportunity pose heightened risks to the volunteers?
- Does the role of the volunteer require careful vetting, given access to or supervision of students, minors, equipment, facilities, or sensitive information?
- If the unpaid collaborator will be working on University research, consider whether regulatory or policy requirements unique to University research are addressed.

A Common Courtesy: Case Study # 8

- A former faculty member, now employed full time at an international research institution, wishes to continue to collaborate on on-going research at UNC Charlotte. The faculty member was PI of the relevant research project at UNC Charlotte. The technical expertise this faculty member has contributed to the research is top notch, and the faculty member has agreed continue participating in the research without pay (in writing).
- Can the former faculty member continue the collaboration via an unpaid research appointment?

A Common Courtesy: Case Study # 8

- A. Yes, the faculty member may remain PI on the award.
- B. No, and the University must return the award to the sponsor.
- C. Maybe, if the faculty member is issued a consulting contract.

Considerations Unique to University Research

- Intellectual Property Ownership Issues:
 - Is the Collaborator an Employee at an Entity with Competing IP Ownership Expectations?
- Conflict of Interest Disclosure Obligations
- Export Controls
- Access to Restricted Data, subject to a DUA or NDA
- Collaborative Research Agreements?
- [Chapter 300: Research, Intellectual Property and Information Technology](#)

Can They Collaborate? Case Study # 9

- Peter is a researcher in the field of Engineering. Last year, he had a paid position conducting research at UNC Charlotte. He recently obtained employment in private sector with Proctor Gamble doing working on similar subject matter. Peter's former supervisor would like to see if he'd be willing to collaborate on a new project, since he did such a good job in the past.
- Would there be any concerns with Peter volunteering on this new project?

Can They Collaborate? Case Study # 9

- A. Yes, there are concerns with Peter volunteering in this capacity.
- B. No, there are no concerns.
- C. Maybe.

Best Practices and Campus Resources

- Reach out to Human Resources or Academic Personnel, as appropriate, and consider whether a Background Check is advisable ([UP 101.23 Employment-Related Background Checks and Criminal Activity Reporting](#)) ;
- Contact Risk Management for guidance on:
 - Insurance coverage,
 - Releases or waivers,
 - Minors on Campus requirements ([UP 716 Minors on Campus](#))
- Consider whether a Collaborative Research Agreement is appropriate to outline expectations for collaboration with an Unpaid Volunteer

Questions?



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