


Uncompensated is Complicated:

Legal and Policy Considerations for Engaging Unpaid Collaborators in Charlotte Programs & Activities

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Overview of Presentation

- Discussion of Volunteer Opportunities at Charlotte
- Explanation of the Fair Labor Standards Act's Requirements for Volunteering at Charlotte
- Additional Legal and Related Considerations for Engaging Volunteers
- Best Practices for Engaging Volunteers



Types of Volunteer Opportunities at Charlotte

- Traditional Volunteer Opportunities for Employees and Students and Unaffiliated Community Members
 - UNC Charlotte Camps on Campus for Summer 2021
 - Jamil Niner Student Pantry Volunteer Shift
 - Founders Day Community Service Event
 - National Volunteer Week
 - Habitat for Humanity
- Unpaid student internships
- Unpaid collaborations with courtesy faculty and others for the purpose of supplementing instruction or institutional research



Call for Volunteers: Case Study #1

Tracy, Isabel, and Sam are preparing for the annual Division of Institutional Integrity Legal Symposium. They believe it would be helpful to practice the training sessions in front of a live audience so they can get feedback. OLA puts out a call for volunteers to meet in the conference room from 5:00 pm – 6:00 pm to review the presentation and fill out feedback forms. Melanie White expresses an interest in volunteering.

Would it be appropriate to allow Melanie to “volunteer” in this way?



Call for Volunteers: Case Study #2

John is employed by Charlotte as a math teacher. He also learns of OLA’s call for volunteers. His supervisor suggests that John 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 the attorneys?




What is the Fair Labor Standards Act?

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



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Exempt Employees

- 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:
 - Teachers;
 - Professors;
 - Coaches;
 - Professional Employees;
 - Administrative Employees;
 - Executive Employees;
 - Graduate Teaching Assistants; and
 - Student Residential Assistants.

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Why Does the FLSA Matter when considering Volunteer Opportunities?

- 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”.

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The Volunteer Exemption

- A person who performs work for a public agency (including 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.*


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Practically Speaking, what does this mean?

- An individual can provide volunteer services at Charlotte if:
 - The circumstances show they have no reason to expect payment;
 - They are providing a service that is different from what they are ordinarily paid to do for the employer; and
 - The decision to volunteer was made independently.

Outside the Norm: Case Study # 3

Norm is a student at 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?


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Summer Intern: Case Study # 4


Jonathan is an undergraduate student at UNC Wilmington. He hopes to be employed as a biology researcher one day. Jonathan reaches out to one of the biology professors at Charlotte to ask if he could volunteer some hours during the summer to help her with her research. Jonathan 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 Jonathan's help. She wants to offer him an unpaid internship which would involve weekly homework assignments for academic credit. .

Can Jonathan volunteer in this capacity?

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 **Factors for Assessing Whether an Internship May be Unpaid**

- 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**


Mya is studying at Charlotte on a Student Visa from The University of Nairobi. During her last semester, Mya was helping a faculty member with a research project. She completed her course work and graduated a month ago but the faculty member would like her 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 Mya to keep assisting with the research project for the next couple of weeks.

Is it permissible for Mya to volunteer to continue performing this research after she has graduated?

Understanding the Background: Case Study # 6

Amy is a student at Wake Forest 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?





Additional Legal and Related 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 Charlotte. The faculty member was PI of the relevant research project at Charlotte. The technical expertise this faculty member has contributed to the research is top notch, and the faculty member is willing to continue participating in the research without pay.
- Can the former faculty member continue the collaboration via an unpaid research appointment?



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
- Federal Contractor Vaccination Requirement
- Collaborative Research Agreements?



Best Practices and Campus Contacts for Engaging Volunteers

- Reach out to Human Resources or Academic Personnel, as appropriate, and consider whether a Background Check is advisable;
- Contact Risk Management for guidance on insurance coverage, and releases or waivers, as appropriate;
- Consider whether a Collaborative Research Agreement is appropriate to outline expectations for collaboration with an Unpaid Volunteer

Questions?