

Canadians Volunteering in the USA

Article by Duke University Hospital (<http://www.visaservices.duke.edu/volunteer.html>)

Federal law limits severely the kinds of employment an alien in temporary visa status may undertake in the U.S. People who are unable to accept paid employment often ask whether they are permitted to engage in "volunteer" work and what activities are acceptable. This FAQ provides some guidance regarding volunteer options available to people present in the U.S. in temporary alien status.

1. Who is a volunteer and who is an employee?

The first assumption people make is that the only issue is money - a volunteer provides a service for free, but an employee gets paid. The answer is more complicated than it seems. Various U.S. government agencies have authority to control the activities of aliens in the U.S. in a number of ways, including the activity of "volunteering."

2. Which government agencies or organizations are involved in or have in interest in this discussion?

The Department of Homeland Security (DHS) has the authority to make determinations regarding the activities of aliens in the U.S. The Department of Labor (DOL) has the authority to make determinations regarding services, compensation, and the nature of work, both for U.S. workers and for alien workers.

3. What are the basic DHS rules?

DHS laws and regulations prohibit employment of aliens except under specific conditions. For example, F-1 students may work in on-campus jobs, in curricular practical training, in optional practical training, for certain international organizations, or in certain instances of exceptional financial hardship. DHS generally prohibits all other employment. J-1 students and scholars and H-1B workers have similar work restrictions, though the details vary for each visa classification. (See the document, ["Maintaining Status, Work Authorization, and Extending Stay"](#))

4. What are the basic DOL rules?

DOL has two primary duties:

- protect workers, both U.S. and foreign, from underpayment and abuse, and
- protect American jobs.

DOL draws a distinction between

- True volunteer activities, which are traditionally done by nonpaid persons out of their own sense of altruism and for their own pleasure or fulfillment, and
- Work usually done by a paid employee, but for which a particular worker is not paid or is not properly compensated as part of an agreement between the "employer" and the "employee."

5. Why does it matter what I do if I am not paid? If I want to volunteer for a company to get good and valuable experience and they want me to be there, why can't I do that?

Congress has passed a number of laws dealing with labor rules and the employment of aliens. One of these laws, the Fair Labor Standards Act (FLSA), guides and directs how

the DOL and employers must view and treat those who provide labor or services. From the DOL perspective, both to protect U.S. and foreign workers from abuse and to protect U.S. jobs, the FLSA says that if a person provides a normal service for which a person would normally be employed, the activity is work/employment, and the employer must pay the person. There are exceptions for bona fide training programs where the trainee functions, to some degree, like an employee, but is under close supervision and provides no significant measurable work for the employer. The trainee must not take the place of a paid employee.

From the DHS perspective, if the alien is providing a service normally provided by a paid employee, then the activity is work and the alien is receiving the "compensation" of valuable training or experience and/or the compensation of possible future paid employment. It does not matter that no money changed hands at the time the work was being done. Being paid or compensated in the future, does not change the fact that one is performing real work in the present. For example, you cannot serve as a lab technician while waiting for work permission that will permit you to do the same or similar work for pay. In that case DHS sees the current "volunteer" activity as work that is "holding" a position for the future and is therefore compensating or "paying" you with the reward of a future job.

If you are thinking about a volunteer arrangement with an employer in a job that would normally be paid, you should consult an immigration lawyer and the employer should consult a labor lawyer before you move forward with that arrangement. Both you and the employer could be taking a big risk.

6. I think I understand, but could you give me some examples?

Sure, here are some examples, but we strongly urge you to check with Visa Services directly before engaging in any volunteer activity that a person is normally paid to do.

Examples:

- **VOLUNTEER:** A "candy striper" in a hospital or a literacy tutor at a local literacy council or a helper at a local soup kitchen traditionally perform these services as acts of charity and good will and as a service to the community.
- **NOT VOLUNTEER:** The coordinator or director for a literacy council or soup kitchen is usually a paid position. Working, unpaid, if that position is normally paid, would generally fall into the "unauthorized work" category. Even though the organization is nonprofit and uses volunteers extensively, the position of coordinator or director is a paid position, not volunteer.
- **VOLUNTEER:** A person skilled in computer programming volunteers his/her services to a nonprofit/charitable organization such as a substance abuse counseling center to help them design a computer based intake system to log their calls. While the "work" of computer programming would normally be a paid activity, note that in this circumstance it is performed for a nonprofit/charitable organization which traditionally depends on "gifts in kind" (items, resources, or services donated) to conduct its business. The programming is a gift of time and talent to an organization that depends on such gifts, with no expectation of payment or a future job.
- **NOT VOLUNTEER:** A person works unpaid as a lab technician, or a computer programmer or a market analyst for an employer, and performs services for which a person would normally be paid. Such activities are not volunteer, but take on the character of employment.

7. Duke is a nonprofit organization. Why can't I volunteer at Duke in any job I choose?

You may certainly volunteer for those activities at Duke that are normally performed by volunteers.

Go to the [Duke University](#) web site and type in the word "volunteer" in the "search" location. You will find dozens of volunteer opportunities at the University, Medical Center, and Health System.

Many Duke student groups also organize community service volunteer activities. Duke also has over 20,000 employees who carry on the work of the institution. Performing one of these jobs is not a volunteer activity. Duke job names and descriptions appear on the [Duke HR web site](#).