

**OPINION NO. 82-040****Syllabus:**

An unpaid volunteer who renders service on behalf of a private organization does not fall within the definition of "employee" as the term is used in R.C. 4123.01(A).

**To: Raymond A. Connor, Administrator, Ohio Bureau of Workers' Compensation, Columbus, Ohio**

**By: William J. Brown, Attorney General, June 17, 1982**

I have before me your request for my opinion which presents the following questions:

- (1) Does an unpaid volunteer who renders service on behalf of a private organization fall within the definition of "employee," as that term is used in R.C. 4123.01(A)?
- (2) If question 1 is in the affirmative, what organization is the "employer" of the volunteer, as that term is defined in R.C. 4123.01(B), in the following situation? A volunteer member of one charitable organization, such as a mastectomy support group, performs volunteer work at the premises of another charitable organization, such as a hospital, and in the course of this work is injured.

With respect to your first question R.C. 4123.01(A) states:

As used in Chapter 4123. of the Revised Code:

(A) "Employee," "workman," or "operative" means:

(1) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education;

(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, but not including any officer of a family farm corporation, or (b) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by Chapter 4123. of the Revised Code.

As I recently had occasion to note in 1982 Op. Att'y Gen. No. 82-007, "one of the fundamental elements necessary for the compensability of claims for workers' compensation benefits is the existence of the relation of employer and employee. Absent this relationship the provisions of the Workers' Compensation Act have no application. Acklin Stamping Co. v. Kutz, 98 Ohio St. 61, 120 N.E. 229 (1918)." As I further noted in Op. No. 82-007:

In order for a particular arrangement to constitute the relationship of employer and employee under the workers'

compensation law the worker must be serving under an appointment or contract of hire express or implied. Industrial Commission v. Bateman, 126 Ohio St. 279, 185 N.E. 50 (1933). However, it is impossible to have a contract for hire without an obligation that the person denominated the employer pay the person employed. Coviello v. Industrial Commission, 129 Ohio St. 589, 196 N.E. 661 (1935).

It is not necessary to determine whether the unpaid volunteers about which you have inquired are serving under an appointment, as that term appears only in R.C. 4123.01(A)(1) and, therefore, relates only to "person[s] in the service of the state, or of any county, municipal corporation, township, or school district therein." Thus, the question is whether unpaid volunteers serve under a contract for hire, and are therefore "employees" within the meaning of R.C. 4123.01(A)(2). Since the aforementioned authorities held that there can be no employer/employee relationship absent a contract for hire, and there is no contract for hire where the person receiving services is under no obligation to pay the person providing those services, I can only conclude that where a volunteer rendering services on behalf of a private organization is unpaid, such unpaid volunteer is not an "employee" within the meaning of R.C. 4123.01(A).

Since I have concluded that an unpaid volunteer who renders service on behalf of a private organization is not an "employee" as defined in R.C. 4123.01(A), I need not address your second question.

Based on the foregoing analysis, it is my opinion, and you are advised, that an unpaid volunteer who renders service on behalf of a private organization does not fall within the definition of "employee" as the term is used in R.C. 4123.01(A).