

Legal Questions & Answers

VOLUNTEERS IN GLEANING



CENTER FOR
**AGRICULTURE &
FOOD SYSTEMS**



USDA National Agricultural Library
U.S. DEPARTMENT OF AGRICULTURE

This factsheet is presented by the National Gleaning Project and funded by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

Acknowledgments

This factsheet is presented by the [National Gleaning Project](#), a partnership of the [Center for Agriculture and Food Systems](#) at [Vermont Law and Graduate School](#) and the [Association of Gleaning Organizations](#). The lead author is Rachel Armstrong of [Farm Commons](#). We also thank Olivia Burton MFALP'21, and the organizations who shared their photographs: [Senior Gleaners](#), [Eden Gleaning Project](#), [Salvation Farms](#), and [Lincoln County Gleaners](#).



[Farm Commons](#) is a 501(c)(3) nonprofit organization that empowers agricultural communities to resolve their legal vulnerabilities within an ecosystem of support.




The [National Gleaning Project](#) was created in response to the need for a national network connecting modern field gleaning and food recovery organizations across the United States. The National Gleaning Project also provides access to related law and policy resources and samples of waivers, handbooks, and other documents to help support the work of these organizations.



The Association of Gleaning Organizations (AGO) works to build the capacity of other food rescue entities to provide healthy food access to vulnerable populations while reducing food waste and connecting communities. Founded in 2019, we are a member-led, member-run association composed of gleaning organizations in North America. Please visit gleaningorgs.com for more information.



The Center for Agriculture and Food Systems (CAFS) uses law and policy to build a more sustainable and just food system. In partnership with local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develop resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system. To learn more, please visit www.vermontlaw.edu/cafs.



Gleaning organizations often rely on the help of volunteers to harvest agricultural crops for donation to a food bank or direct distribution to those in need. Ensuring that volunteers are in fact volunteers and not more accurately considered employees may help protect gleaning organizations from liability for unintentional potential violations of labor laws.

Special thanks to the organizations who provided photos for this factsheet.



What is gleaning?

Gleaning is an ancient practice of collecting unharvested crops for distribution to food insecure populations and was once recognized as a legal right for the poor in some countries. The practice continues today, and considering the increasing attention on food waste, the movement is growing. Traditional field gleaning benefits farmers, volunteers, and those experiencing food and nutrition insecurity.



Who is a volunteer?

For such a straightforward question, this is surprisingly difficult to answer. The Fair Labor Standards Act (FLSA) is the law that establishes minimum wage and overtime regulations, among other worker protections.

That law defines a volunteer as “an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours.”¹ Reading closely, this definition appears to limit volunteer status to people who serve a public agency. However, nongovernmental organizations commonly make use of volunteers.

To include nonprofit organizations, we must continue to flesh out this definition. Since the passage of the FLSA, a complex array of other laws, regulations, and court rulings have contributed to a more robust definition. To summarize, the law has come to focus on who **is not** a volunteer, rather than who is. Of particular importance, the law says that doing the work of a for-profit business is not considered volunteering.² This development is good for gleaning organizations, as many groups that host volunteers to glean are organized as nonprofits. However, a nonprofit does not have unlimited license to utilize volunteers. For example, a nonprofit is limited in its ability to ask its employees to perform the same tasks they are otherwise paid to do as “volunteering.”³ The reasons for this limitation are obvious—it could lead some entities to coerce employees to work for free. There are other restrictions on the ability of nonprofits to utilize volunteers, but importantly, nonprofit gleaning entities will find it much easier to host volunteers than for-profit gleaning entities.



1 29 CFR § 553.101(a) <https://www.govinfo.gov/content/pkg/CFR-2010-title29-vol3/pdf/CFR-2010-title29-vol3-sec553-103.pdf>.

2 See *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985), See also *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947).

3 29 CFR § 553.101(d), 29 CFR § 553.103.



How important is a gleaning organization's business structure for volunteers?

Whether the entity hosting volunteers is a nonprofit or a for-profit organization is important, as discussed above. For-profit entities are prohibited from using volunteers in the course of their work, but this is less because of the legal definition of volunteer than it is about the legal definition of employee. An employee is an individual who is permitted to do the work of a for-profit business.⁴ Any time an individual is permitted to do the work of a for-profit business, that person is an employee.

This means that even if a nonprofit organization places a “volunteer” on a farm, employment law does not allow that volunteer to perform any and all tasks. If the “volunteer” performs tasks that achieve the work of the for-profit farm, then the individual is no longer a volunteer of the nonprofit gleaning entity—the individual has become an employee of the farm.

So, the question becomes **whether gleaning achieves the work of a for-profit farm.** In a traditional sense, gleaning is the harvesting of unmarketable products for use by underserved community members. Harvesting unmarketable products is clearly not the work of a farm; farms are in the business of harvesting products for sale. However, there are many variations on traditional gleaning. The interplay between gleaning, volunteering, nonprofit entities, and for-profit farms is complex, and requires extensive analysis to adequately address specific situations.

⁴ 29 U.S.C. 203(g) and 29 USC 203(e)(1).



If a volunteer receives in-kind compensation (gleaned produce or food), are they still a volunteer?

The answer here is, “it depends.” To recall the definition of volunteers, they are individuals who labor “without promise, expectation or receipt of compensation for services rendered.”⁵ This seems to imply that a person who receives compensation no longer fits the definition of a volunteer. However, court cases and other guidance material indicates that some compensation in the form of reimbursement for expenses incurred is allowable.⁶ Examples include reimbursement for mileage or actual costs incurred to conduct the volunteerism. When a person is compensated for the time they spend volunteering, this becomes a legal gray area, especially if the compensation approaches a wage rate. Further, the more a volunteer is dependent for their livelihood on the compensation provided, the more likely it is that the person has crossed the line into becoming an employee.⁷ Exactly when that line is crossed depends on many factors unique to a particular situation.



If a volunteer pays to participate in a gleaning opportunity, does this impact whether they are legally classified as a volunteer?

Nothing in the definition of volunteer prevents an individual from paying for the opportunity. It is important to keep in mind that an employee is a person who does the work of a for-profit business. A person can meet the definition of an employee even if they are paying for the privilege of conducting the labor. To put it another way, whether the person is paying for the experience does not determine whether they are a volunteer. The most relevant questions are **what they are doing and for whom**.

⁵ 29 CFR § 553.101(a).

⁶ 29 CFR § 553.106(b).

⁷ See *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985), which established an economic reality test for determining if volunteer laborers for a nonprofit business enterprise should be treated as employees under federal Fair Labor Standards Act. The economic reality test relates to the extent to which the laborer is dependent on the relationship for their sustenance.





If the farm where the gleaning takes place is paid for the produce, does that impact the status of volunteers?

The answer to this question depends on detailed circumstances of the situation. Nothing in the definition of a volunteer precludes a farm from receiving compensation. However, as discussed above, an employee is an individual who does the work of a for-profit business. The fact that the farm is being paid for the produce raises the possibility that the volunteers are doing the work of a for-profit farm. If the farm is being paid for the product, the product may be marketable, which may suggest that its harvesting is the work of that farm. Like most questions, however, there are many factors to consider and the analysis in each situation will be unique.



If gleaned produce is sold to food banks or other markets, does that impact the status of volunteers?

Many nonprofits sell goods and services without violating their nonprofit status or risking the use of volunteers, so that factor alone does not necessarily present a problem. According to the definitions of employee and volunteer, what an entity does with the products of a volunteer's labor does not determine whether the individual is a volunteer or an employee. The primary consideration is whether the work of a for-profit business is being performed. If it is, the individual is likely an employee and not a volunteer.





Association of Gleaning Organizations

1140 South 1100 East
Salt Lake City, Utah 84105



Center for Agriculture and Food Systems
Vermont Law and Graduate School

164 Chelsea Street, PO Box 96
South Royalton, Vermont 05068