

International Student & Scholar Services (ISSS) and the Office of International Services (OIS) have developed this information sheet to address issues regarding “volunteering” versus “working” for foreign nationals (international students, scholars, and employees) and VU/VUMC departments.

## GUIDELINES FOR VANDERBILT

- A foreign national cannot perform work as a volunteer if the foreign national believes that some form of compensation will follow. This specifically includes volunteering for a trial period leading up to compensated employment.
- A foreign national may not volunteer while awaiting work authorization or change of status (that would enable them to work), even if for a few days.
- Dependent family members of F-1, H1B, TN1, and O1 visa holders cannot work or volunteer at Vanderbilt without participating in the normal recruitment and hiring processes, including obtaining appropriate employment authorization.
- Dependents of J-1 and E-3 beneficiaries MAY obtain a work permit for unrestricted employment, but cannot volunteer until the EAD is in hand.
- A person cannot perform work as a volunteer in a position that would normally be a paid position.
- Defining a position as “unpaid” (e.g., an unpaid internship) or “volunteer” does not mean that it is a legitimate volunteer position, given the USCIS guidelines and other relevant labor and employment laws.
- A Vanderbilt department or lab that engages in any of the aforementioned, unauthorized volunteer situations is in violation of federal Immigration and Labor Laws. Such violations may result in substantial fines and civil and/or criminal penalties. The foreign national at Vanderbilt, volunteering as in the above situations, will violate his or her visa status and may jeopardize his or her ability to remain in or return to the U.S.

## RELEVANT REGULATIONS

The following describes the U.S. Citizenship & Immigration Service (USCIS) interpretation of the concept of “work” versus “volunteering.”

- A foreign national cannot perform work as a volunteer in a position that would normally be a paid position or if the foreign national believes that some form of compensation will follow. The U.S. Citizenship and Immigration Service (USCIS) views such volunteering as “work” and requires proper employment authorization issued by that agency. This specifically includes volunteering by a foreign national for a trial period leading up to compensated employment.
- [A]n applicant for a change of status may not offer his or her services to a prospective employer, even on a volunteer basis. The employment is unauthorized as long as the alien derives any benefit from it. (*Lawrence J. Weinig, INS Deputy Assistant Commissioner for Adjudications, 66 NO. 19 Interpreter Releases 539*)
- In addition, the volunteer rule may give rise to a number of potential abuses. For example, may an employer lawfully suggest to an alien that he or she should do a period of ‘volunteer’ work while the employer is deciding whether or not to file a nonimmigrant visa petition or a labor certification application? Recently, the INS indicated that an applicant for change in nonimmigrant status could not offer his or her services to a prospective employer on a ‘volunteer’ basis. The INS has stated that: ‘If any type of benefit could accrue to the alien, though it may not be wages or fringe benefits, the services will be considered unauthorized employment.’ (*89-05 Immigr. Briefings 1*)
- Volunteer services for a prospective employer constitute unauthorized employment if the alien will ultimately derive some benefit from the work. The ultimate question in most volunteer cases will be: What did the alien expect in return? If he or she expected compensation, reward, or future benefit, then the volunteer work probably violates status. (*95-05 Immigr. Briefings 1*)

## VOLUNTEER OPPORTUNITIES AT VANDERBILT

A volunteer position is a legitimate, advertised volunteer position that involves no compensation.

- A foreign national may volunteer at Vanderbilt University if they are in an official, institutionally-recognized volunteer initiative that is administered through Volunteer Services (at VUMC, see <http://www.mc.vanderbilt.edu/root/vumc.php?site=volunteer&doc=8043>) or coordinated through the Office of Active Citizenship and Service (OACS, see <http://www.vanderbilt.edu/oacs>).
- Many community-based organizations offer opportunities for volunteering. As long as no compensation is involved, and the opportunity is officially advertised as a volunteer position, the foreign national may participate.

## EMPLOYMENT

If you would like a foreign national to work for your department or if you have questions related to their participation as a volunteer, please contact:

- International Student & Scholar Services (ISSS) for individuals on:
  - F-1 visas, F-1 Optional Practical Training, F-1 Curricular Practical Training
  - J-1 visas (i.e.: student, research scholar, professor, short-term scholar, & specialist categories), J-1 Academic Training, and J-2 EAD
- Office of International Services (OIS) for individuals on:
  - H1B, TN-1, E-3, O-1, or other employer-sponsored work visas.
  - Permanent Residency
- Individuals may also have one of the following types of work authorization on his or her own, independent of VU sponsorship or processing:
  - EAD (employment authorization document) through other non-immigrant visa categories not sponsored by Vanderbilt, a pending Permanent Residency petition, or Refugee status.