

Court Finds Volunteer Firefighters to be “Employees” for the Purpose of Determining Eligibility Under FMLA/FLSA

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A fire department dispatcher filed suit against his employer under the Family Medical Leave Act (FMLA) for allegedly violating his right to protected leave. The employer filed a motion for summary judgment, arguing that the employee was not eligible for leave under the FMLA because it did not employ at least 50 employees. At that time, the employer employed 41 employees, excluding 25-30 “volunteer” firefighters who were not required to respond to any emergency calls, but who were paid \$15 per hour for the time they did spend responding to a call or maintaining equipment. The volunteers were not considered employees by the department, and thus, did not receive health insurance, sick or vacation time, or social security benefits, but the volunteers did have the ability to be promoted or discharged.

The district court agreed with the fire department and granted its motion. The employee appealed.

The U.S. Court of Appeals for the Sixth Circuit concluded that the volunteer firefighters were, in fact, “employees” within the meaning of the Fair Labor Standards Act (FLSA), and reversed the district court. The Court of Appeals held that the substantial wages paid to the firefighters constituted compensation, not nominal fees, which weighed in favor of finding that they are employees, not volunteers. The Court acknowledged that the employer did not dictate the firefighters’ schedules, but concluded this was insufficient to overcome the fact that the firefighters were paid substantial wages for performing work as permitted by the employer.

Employers should carefully review their relationship with any “volunteers” to ensure they do not qualify as employees under the Fair Labor Standards Act or applicable state law. For more information read [Mendel v. City of Gibraltar, No. 12-1231, \(6th Cir. August 15, 2013\)](#).

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