Volunteers Are Not "Employees" Protected From Employment Discrimination Under Title VII

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Many non-profit organizations, public agencies, and other employers rely upon volunteers. But what happens when an organization decides to terminate a volunteer's affiliation with it because of the volunteer's religion? Such conduct towards an employee is, of course, prohibited by Title VII. So are volunteers "employees" for the purposes of Title VII?

The answer, according to a recent panel of the U.S. Court of Appeals for the Sixth Circuit, is that volunteers who do not receive remuneration and other financial benefits and whose performance is not controlled by the organization in a manner similar to the employee-employer relationship are *not* "employees" under Title VII, and may not advance employment discrimination claims.

In *Sister Michael Marie v. American Red Cross*, the Sixth Circuit addressed claims by two Catholic nuns who claimed that their volunteer affiliations with two organizations dedicated to disaster relief – the American Red Cross and the Ross County Emergency Management Agency – were terminated because of their religious beliefs. In rejecting the nuns' argument that they were "employees" under Title VII, the Sixth Circuit emphasized that the determination of whether an individual is an "employee" or not is fact dependent and requires examining a variety of factors derived from common law agency principles, including those relating to financial matters and to control over the volunteer's performance. As to the former, the nuns were not paid , did not receive traditional employment benefits like medical, dental, and vision insurance, and were not treated as employees for income tax purposes.

As to the latter, the Sixth Circuit said the record did not support the nuns' contention that the organizations exercised control over the means and manner of their performance because they provided them with a set schedule and had the power to assign their volunteer tasks; instead, it showed the nuns retained considerable discretion and flexibility in when and how they volunteered.

What Does this Mean for Employers?

In the past few years, employers have seen a variety of claims brought by non-compensated individuals – like unpaid interns – seeking to expand the definition of "employee" in order to be covered by traditional employment statutes. The *Sister Michael Marie* decision is a good example of how employers can adequately draw a line between its employees and volunteers to avoid unintentionally treating volunteers as "employees" sufficient to trigger coverage under Title VII.

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