

## Sixth Circuit Counts Paid Volunteers As Employees Under The FMLA

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### Timesheet

A divided Sixth Circuit recently came to a surprising decision regarding the definition of “employee” under the Family Medical Leave Act (FMLA) and Fair Labor Standards Act (FLSA). In *Mendel v. City of Gibraltar*, No. 12-1231 (6th Cir. Aug. 15, 2013), the Court determined that paid volunteer firefighters were “employees” for purposes of the FMLA and FLSA.

The plaintiff police dispatcher brought suit against the city alleging a violation of his rights under the FMLA. The city moved for summary judgment on the basis that it did not employ the requisite number of employees for application of the FMLA (50), because it had 41 employees and did not consider its volunteer firefighters “employees” for purposes of the FMLA. The district court agreed and granted summary judgment.

The Sixth Circuit disagreed and reversed, finding that the city’s volunteer firefighters met the FMLA definition of “eligible employee,” which does not include any employee of an employer that employs fewer than 50 employees. Because the FMLA borrows its definition of “employee” from the FLSA, the Court looked to the FLSA definition and interpreting case law.

The FLSA defines “employee” as an “individual employed by an employer” and “employ” as “to suffer or permit to work.” The Court determined that the volunteer firefighters, who are paid \$15 for each hour that they respond to fires – a wage the Court deemed “substantial” – meet this definition. An FLSA provision excluding from the definition of “employee” any public agency volunteers who receive no more than a “nominal” fee for their services did not sway the Court, which held the hourly wage paid to the firefighters to be compensation.

While particularly applicable to employers with volunteers, the Court’s broad reading of the FLSA and FMLA is something for all employers to note. The decision underscores how the determination of who is an “employee” (independent contractors being the more common area of dispute) can determine whether an employer is covered by a statute.

A full text of the case can be [found here](#).

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