# “Employee” Status Not Necessarily Dependent On Compensation

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While Title VII discrimination claims apply only to “employees” and “employers,” the statute’s definitions of those terms are spectacularly unhelpful. An employee is someone who is employed by an employer. 42 U.S.C. § 2000e(b) & (f). Thanks, Congress! In light of this thoroughly circular definition, courts use agency principles to determine employment status when such is not clear.

An illustrative opinion was recently issued by the Northern District of Illinois in *Volling v. Antioch Rescue Squad*. In *Volling*, one of the main questions was whether the members of ARS’s volunteer ambulance squad should be considered employees for purposes of Title VII.

Several factors are considered in making this employment determination, including: the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the method of payment; the hired party’s role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. No single factor is dispositive, but courts will often give great weight to the amount of control the putative employer has over the putative employee.

Defendant ARS argued that the volunteer ambulance squad could not be employees because they received no payment. This view seems to be supported by the Second and Fourth Circuits, which require significant economic remuneration for a worker to be considered an employee for Title VII purposes. The Seventh Circuit has yet to rule on the issue, but the district

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court noted that the Seventh Circuit has rejected labels such as “volunteer” and endorsed the consideration of the common law factors listed above. Accordingly, the district court agreed with the Sixth Circuit’s view that compensation is just one factor to be considered in the employment analysis. Perhaps significantly, the *Volling* court stated that compensation may well be less important with regard to not-for-profit organizations such as ARS than to commercial employers.

Thus, the court took into consideration the facts alleged by the plaintiffs, which included, among other things, that plaintiffs: are assigned to work specific shifts and defendants control who works those shifts with them; performed their work in the station and ambulances operated and used by ARS; are required to wear uniforms; received training; had to go through probationary periods; and had supervisory subordinate relationships with team leaders and board members of ARS.

Based on the degree of control exercised by ARS and the mandate to construe Title VII broadly to prevent discrimination, the court refused to dismiss the case for a lack of an employment relationship. “A workplace is not necessarily any different for a non-compensated volunteer than it is for a compensated ‘employee,’ and while both are generally free to quit if they don’t like the conditions (at-will employment being the norm), neither should have to quit to avoid sexual, racial, or other unlawful discrimination and harassment.”

This case serves as a good reminder that – similar to problems that can arise from using independent contractors – just because a worker is considered to be and labeled an unpaid volunteer, trainee, or intern doesn’t mean the employer is necessarily shielded from Title VII (or other federal statutory) liability. What counts is how those workers are treated, not how they are labeled.