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Employers Beware: Could the Generosity of Volunteers Result in a Perceived Employer-Employee Relationship?

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The generosity of volunteers builds a link between employers and the community, which frequently proves critical to accomplishing community and philanthropic work during times of need. Often times, there is too much to be done, but not enough people to get the job done. This is particularly the case when the work that needs to be done is unpaid. Consequently, all who are willing to do the work are welcomed with open arms.

Despite the need for volunteers in every community, and the eagerness to accept anyone who is willing to volunteer, employers should keep a lookout for situations where the work of unpaid volunteers closely resembles the work of paid employees. This was precisely the issue addressed in the recent case of *Sister Michael Marie, et al. v. American Red Cross, et al.* (6th Cir. Nov. 14, 2014). In this case, two Catholic nuns, Michael Marie and Mary Cabrini, filed a lawsuit under Title VII alleging that the American Red Cross and the Ross County Emergency Management Agency terminated their volunteer status in violation of Title VII. More particularly, the plaintiffs alleged that the local Red Cross executive director did not approve of their religious beliefs because it differed from his own Roman Catholic teachings, and that they were discriminated against and harassed on the basis of their religion.

At the crux of the case was whether the plaintiffs were entitled to even file a Title VII claim since Title VII prohibits discrimination against employees by their employers, and in this case, the plaintiffs were not employees, but simply volunteers. In order to determine whether an individual is an employee, courts typically ignore an individual's title or characterization of the relationship between the individual and the employer. Instead, courts apply a right-to-control test, which examines various factors to essentially determine if a master-servant relationship exists between the parties. Generally, courts have ruled that when a volunteer provides services for free, the individual is not an employee and the analysis ends there. The Sixth Circuit, however, did not end the analysis there. The Sixth Circuit does not view whether the volunteers are paid as determinative of whether an employer-employee relationship exists. In the Sixth Circuit's view, this is only one of many factors to consider in addressing this issue.

In the *Sister Michael Marie* case, the Sixth Circuit looked at, in addition to whether the plaintiffs were being paid, the nature of their assignments, the amount of discretion they had in scheduling, and other various factors. The Sixth Circuit acknowledged that some factors did in fact weigh in favor of the existence of an employment relationship. The majority of factors, however, demonstrated that no such employment relationship existed. These factors included the fact that the plaintiffs did not receive any pay, were not paid benefits, made their own schedules and were not required to report to work. The court ultimately determined that the plaintiffs were volunteers, not employees, and could not file claims under Title VII against the defendants.

While the factors considered in this case weighed against the existence of an employment relationship, this scenario could have easily turned out differently with a slight change in the facts. So, what does this mean for employers? The typical "all who are willing are welcome" attitude may need to be adjusted as volunteers may need to be scrutinized, like independent contractors and employees, to insure that the employer is not forced to have an employment relationship with a "generous volunteer." In a nutshell, employers need to set

parameters and pay close attention to what volunteers are volunteering to do on behalf of or in conjunction with their companies.