LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

LABOR • EMPLOYMENT • IMMIGRATION

MARCH 18, 2024

Eleventh Circuit Weighs in on Public Agency Volunteer Assessment

On March 12, 2024, the Eleventh Circuit affirmed a lower court's determination that golf course attendants at the Osprey Point Golf Club, a golf course owned and operated by Palm Beach County, Florida, were public agency volunteers rather than employees. As such, the complainants were not owed wages under the Fair Labor Standards Act (FLSA). *Adams v. Palm Beach County*, ___ F. 4th. ____ Case No. 23-11065 (11th Cir. March 12, 2024).

The three plaintiffs performed services at Osprey Point in exchange for discounted golf and other benefits. The Court recognized the DOL standard that a "volunteer" is an "individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered." The Court determined that the attendants knew from the time that they applied that they would not be paid for their services. The Court further determined that, in part based on the importance that the attendants themselves placed the services that they performed, there was a civic benefit to their volunteer work. Finally, the discounted golf did not amount to "compensation". Accordingly, The Eleventh Circuit agreed with a lower court that the attendants were public agency volunteers and not covered by the FLSA.

Although the Court's holding has a somewhat limited application to public agency employers, the decision offers an important reminder to employers in general regarding volunteers. The Court offhandedly noted that a "[p]rivately owned golf course must pay wages to attendants providing comparable services." In other words, the key to the employer prevailing in this matter was its status as a public agency notwithstanding that the golf course was operated for-profit.

Under the FLSA, persons are generally prohibited from providing volunteer services to for-profit, private sector employers. If a private, for-profit entity is allowing a person "to suffer or permit to work", the person is due minimum wage and overtime under the FLSA. In contrast, the FLSA generally permits a person to provide volunteer services to public sector employers as long as the person is not volunteering to perform the same work for which they are also employed to perform for the entity. Similarly, persons are allowed to volunteer their time to provide services to private non-profit organizations subject to limited exceptions (e.g., the volunteer cannot work in a commercial activity of the nonprofit such as a gift shop).

A mistake that we encounter from time to time is a private sector for-profit employer who allows someone to willingly volunteer their time for the benefit of the organization. Such a volunteer arrangement (outside of a possible internship which is a separate discussion) is prohibited by the FLSA even where both parties agree to the arrangement. We also encounter issues from time to time where a non-profit organization's employees also wish to perform volunteer services for the same organization. Such an arrangement is permissible as long as there is no overlap between the duties that the person performs as an employee and the tasks that the person performs as a volunteer.

Please do not hesitate to contact us with any questions regarding permissible "volunteer" work.