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Unpaid Volunteers Are Not Employees Under The Fair Employment And Housing Act

Mendoza v. Town of Ross is a significant decision for employers because it holds that unpaid volunteers are not employees for the purposes of the Fair Employment and Housing Act ("FEHA").

The plaintiff in *Mendoza* was a 35 year old quadriplegic man who was born with cerebral palsy and was wheelchair-bound. The plaintiff began working for the town as a volunteer Community Service Officer ("CSO"). As a CSO, he worked at the grammar school and helped to conduct traffic, prevent crime, and participated in neighborhood watch programs. The plaintiff worked as a CSO for about two years until his position as a CSO was eliminated. After the elimination, he sued the town and alleged a variety of employment-related claims. Among other things, the plaintiff alleged that the town failed to accommodate his disability and terminated his employment without cause, in bad faith, and in violation of public policy. Consequently, the question before the *Mendoza* court was whether an unpaid or uncompensated volunteer qualifies as an "employee" for purposes of the Fair Employment and Housing Act ("FEHA"), California's anti-discrimination law.

The *Mendoza* court held that the plaintiff was not an "employee" of the town. Thus, he was not entitled to sue for wrongful termination or employment discrimination. In reaching its decision, the court noted that the definition of "employee" under the FEHA is unclear. As a result, the court deferred to the definition of "employee" contained in the regulations of the Department of Fair Employment and Housing ("DFEH"), the administrative agency that enforces the FEHA. The DFEH defines "employee" as "[a]ny individual under the direction and control of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written." Cal. Code Regs., tit. 2, § 7286.5(b). Under this definition, the plaintiff argued that he was an employee because he was "appointed" as a CSO. The Court rejected this broad reading of "employee" by the plaintiff. The Court explained that there is nothing within the FEHA or its legislative history that suggests a departure from the basic principle that "compensation of some sort is indispensable to the formation of an employment relationship." Therefore, the *Mendoza* court concluded that the plaintiff's service as a CSO was not an appointment, was not provided pursuant to contract, and was not an apprenticeship. As an unpaid volunteer, the plaintiff was not an "employee" under the FEHA.

Although the court held that an unpaid volunteer is not an "employee" for the purposes of the FEHA, an employer cannot necessarily rely on this case to avoid wage and hour obligations in other contexts. Employers are encouraged to closely evaluate all situations where there are issues involving unpaid volunteers.

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