



# "Hot Topics"

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**NOTE:**

*Information provided in this document is meant to be a general survey of the law and reflect current opinions on general matters only. It should not be relied on to aid in specific legal disputes without further legal consultation.*

## ARE YOU SURE YOUR DISTRICT DOESN'T HAVE ANY EMPLOYEES?

You may think that because your district does not pay any of your personnel a regular hourly rate or salary, that you do not have any employees. Sounds reasonable enough, doesn't it? However, several state and federal laws treat your volunteers as employees. This article will attempt to outline some of the problem areas. Part one deals with Title VII implications.

Title VII is the federal statute that protects employees from discrimination by their employers due to the employee's sex, age, religion, handicap and national origin. Title VII expressly applies only to employees. However the definition of employee is quite broad, and may include any personnel who receive compensation. Compensation may convert a volunteer to an employee for Title VII purposes, if the compensation given to the volunteer constitute '*significant remuneration*'. The Fourth Circuit Court of Appeals in *Haavistola v. Community Fire Co.*, held that because the volunteer firefighter received benefits such as disability pension, survivor's benefits, group life insurance, education benefits, worker's compensation, etc., the firefighter had received '*indirect but significant remuneration*', and qualified as an employee for Title VII purposes.

In *Pietras v. Board of Fire Commissioners*, the Second Circuit also held that volunteer firefighters may be considered employees for Title VII claims. The Court held that "*An employment relationship within the scope of Title VII can exist even when the putative employee receives no salary so long as he or she gets numerous job-related benefits.*" The Court found that the firefighter received similar, if not better benefits than the plaintiff in *Haavistola, supra*, and thus found that the firefighter was an employee for purposes of Title VII claims.

The above decisions must be contrasted with the Second Circuit's decision in *O'Connor v. Davis, et al.*, where the Court reviewed a set of facts wherein a college student worked as a student intern at a state run psychiatric center. O'Connor claimed she had been sexually harassed by one of the psychiatrists while working as an intern, and she brought a Title VII claim against the institution. The district court dismissed the suit because they found that O'Connor was not an employee for Title VII purposes. In comparing the facts in the case with those presented in *Haavistola, supra*, the Court found that O'Connor received no salary or other wages, and no employee benefits such as health insurance, vacation or sick pay, nor was she promised any other compensation. The Court then concluded that "*Because there was an absence of either direct or indirect economic remuneration ... we agree with the district court that O'Connor was not an employee within the meaning of Title VII ...*"

In conclusion, commissioners should treat their volunteers as employees for purposes of administering their district's Title VII policies and procedures. If your district does not have an employee manual or handbook that sets forth Title VII compliance policies (*i.e.*, prohibitions against unlawful discrimination of employees, including sexual harassment), it is highly recommended that you obtain one, even if you believe that your district is an all volunteer district. In addition, we all need to make sure that our chiefs and commissioners are properly trained to prevent Title VII claims from arising in the first place, and that our districts are adequately insured against losses from Title VII claims. Probably the best advice that we can follow is to treat your volunteers as though they are employees for Title VII purposes, since I have yet to see a district that has not provided some type of benefits to volunteers, whether it be through insurance, paid points, or other remuneration.