



EMPLOYMENT LAW

Important New Case on "Employee" vs. "Volunteer"

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"Because charities enjoy favored status under the law and do important work in their communities, directors and staff are sometimes lulled into thinking that the rules – including labor laws"– either don't apply to them at all or "can be relaxed from time to time due to exigent circumstances." [More About Nonprofits and Labor Laws](#) (April 25, 2018) *FPLG Blog*.

"...[N]onprofit status may offer tax relief, but not HR immunity." [Do Nonprofits Need To Comply With Employment Laws?](#) (September 24, 2025) *missionedge.com*. "Nonprofits are driven by purpose, not profit. But when it comes to employment laws, the IRS, Department of Labor, and state agencies don't carve out exceptions based on mission. Whether you're a 5-person grassroots group or a multi-million-dollar organization, employment law compliance is not optional."

"While there are some exceptions for the nonprofit community," we explained in our [April 2018 post](#) (and others in the last decade or so) the safe course of action is to assume that all general worker laws apply."

However, that is not always an easy task.

A Sisyphean Challenge

What is commonly referred to in the legal field as "employment law" (or sometimes "labor law") covers a broad range of matters: everything from [workplace safety and wages to discrimination protections and leave policies](#).

And none of these component parts can fairly be described as simple or straightforward. In the United States, this is "one of the most complex and intricate areas of legal compliance [T]he regulations governing employment can feel like, and actually is, a [tangled web of federal, state, and local laws](#)—each with its own rules, exceptions, and requirements."



“[K]eeping up with constantly changing labor laws can feel Sisyphian Regulations that stem from federal, state, and local levels—often with conflicting priorities—create real challenges for organizations who want to achieve and maintain compliance without disrupting operations.”

The icing on this multi-tiered cake is that these laws are “not static.” They “evolve in response to economic conditions” or “emerging workplace challenges.” That’s understandable. But recently – more often than not – there are changes for no good reason at all other than a new administration coming into power determined to overturn what had been in effect for the prior four years. Case in point: the sweeping update to the overtime rules introduced during the Biden presidency have been erased. See DOL Officially Rescinds Biden-Era Overtime Rule (May 20, 2026) *kmm.com* [DOL allowing “for the return of the lower salary thresholds that were established during President Trump’s first term.”]

Misclassification Nightmares

In this vast wheel of employment/labor laws, regulations, and rules, there is one small, but critical, cog: that is, the daunting task of properly characterizing or classifying the people who work at and for the organization and its mission.

In the case of for-profit employers, it’s largely a matter of “employees” vs. “independent contractors.”

For nonprofits, added to this analysis are distinctions between “employees” and “volunteers.” Sometimes, there’s an extra layer of uncertainty in the case of unpaid “interns.”

Many charitable organizations “depend on volunteers,” but “the line between a ‘volunteer’ and an ‘employee’ can get blurred.”

California law generally allows “bona fide” volunteers to donate their time for civic, charitable, or humanitarian purposes. However, courts will scrutinize the label to ensure it is not a disguised employment relationship intended to evade wage-and-hour laws (e.g., minimum wage, overtime, meal-and-rest breaks.)

What, though, is a “bona fide” volunteer? That’s the rub.

A significant and “certified for publication” California appellate ruling has confronted this dilemma head-on: *Spilman v. The Salvation Army* (January 6, 2026) 117 Cal.App.5th 913, First Appellate District, Division Five (San Francisco).

The Recent Ruling

In *Spilman*, an appellate panel ruled 3-0 on the issue of “volunteer” vs. “employee.” More particularly, they announced a new – two-step – threshold legal test, reversing the trial court’s summary adjudication ruling that had used a different (and now overruled) bright-line inquiry.

The appellate decision is not the end of the road, however, for this litigation that has already lasted over five years. The matter has been remanded back to the trial judge to evaluate the facts under the two-step procedure. Because a summary judgment/adjudication ruling can be issued only if there are “no triable issues of material fact,” this newest phase may be a long haul. It will be heavily



dependent on findings of fact.

That will likely also mean the end of the class-action status of the litigation because each plaintiff's request for relief will be judged on its own merits. As it stands right now, the plaintiffs fall into (at least) two distinct and dissimilar factual patterns, with a number of relevant variations within each category.

That's why we won't wait around for the eventual trial court ruling. The significance of this case is in the appellate court's establishment of the new, two-part, threshold legal test. How the facts in this particular case eventually fall into place is much less important (except to the litigants!) than the declaration of the brand-new legal standard.

See, for example: *Volunteers, Interns, and Wage Laws in California: Where the Line Really Is (and How to Stay on the Right Side of It)* (February 17, 2026) *Preovolos Lewin ALC* ["underscores both the risks and the framework courts use to determine whether an individual is truly a volunteer—or an employee entitled to wages."]

See also:

- *Nonprofits and Volunteers: How to Avoid Creating an Unintended Employment Relationship* (January 16, 2026) *Nuddleman Law Firm* ["provides detailed guidance on when a nonprofit's volunteers will be treated as employees under the Industrial Welfare Commission (IWC) wage orders"]
- *Spilman v. The Salvation Army: California Court of Appeal Announces a New Framework for Nonprofit "Volunteers" in Wage and Hour Cases* (February 25, 2026) *Hayley Aylesworth, Esq. and Carina Novell, Esq., SheppardMullin* ["adopts a new framework for distinguishing volunteers from employees in the nonprofit context. The decision reshapes the way nonprofits should evaluate their volunteer programs, particularly where volunteers perform substantial work tied to revenue-generating operations"]
- *California Court of Appeal Creates Test for Distinguishing Volunteers from Employees* (March 4, 2026) *Michael A. Wahlander, Esq. and Charlie Y. Wang, Esq., Vedder* ["the lack of an agreement for compensation was not dispositive of" the volunteer/employee determination]

Overview of Spilman Facts and Law

From the factual summary in the *SheppardMullin article*, above: "The plaintiffs participated in the Salvation Army's six-month residential substance abuse rehabilitation program. Program participants received room and board, meals, clothing, small gratuities, and social services such as counseling and religious programming. In exchange, participants were required to perform "work therapy," generally full-time, performing typical retail/warehouse tasks (e.g., unloading trucks, sorting donations, stocking, and assisting customers) to support the Salvation Army's thrift-store and warehouse operations. Participants were prohibited from outside employment while in the program, and the Salvation Army controlled scheduling and work conditions."

There is one additional key fact relevant to certain of the plaintiffs including Mr. Spilman: They "voluntarily" signed up for the Program, but only after they were given a choice by a court: either



Door No. 1 (jail time) or Door No.2 (Salvation Army “work therapy”).

“The plaintiffs alleged they were effectively employees under California law and sought unpaid minimum wages, overtime, and related remedies on behalf of themselves and other rehabilitation center participants. The Salvation Army argued participants were volunteers engaged in rehabilitative programming, not employees.”

At the trial level, the parties curiously stipulated to putting the case before the trial court on cross-motions for summary adjudication – to resolve the question of “employee” vs. “volunteer” status. On that basis, the judge put aside the evidentiary objections, and ruled, as a matter of law, that “the employment relationship under California law is fundamentally contractual, and that an expectation of compensation is essential to such a relationship, such that voluntary unpaid workers are not employees.” On that basis, she granted The Salvation Army’s motion and entered judgment in its favor.

However – and this is a big caveat – she made the ruling under a special rule which essentially gives her leeway to push the matter up to the appellate level when there is “divided” authority. In the Conclusion, she wrote: “For the foregoing reasons, Plaintiffs’ motion for summary adjudication regarding employment status is denied, and Defendant’s cross-motion for summary adjudication that Plaintiffs were not Defendant’s employees under California law is granted. Pursuant to Section 166.1 of the Code of Civil Procedure, the Court finds that the issue presented by the parties’ cross-motions—whether Plaintiffs, who voluntarily participated in TSA’s six-month residential alcohol and drug rehabilitation program are TSA’s ‘employees’ within the meaning of the Labor Code—presents a controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation.”

The three-judge appellate panel overruled the trial judge’s “expectation of compensation” criterion as “essential” to an employer/employee relationship. Instead, as summarized by the Prepvolos Lewin blog post, above, they clarified that “when a nonprofit claims an individual is a volunteer, it must satisfy two requirements.”

The first prong relates to “genuine voluntary service”: The individual “must freely agree to provide services: For personal fulfillment, charitable, religious, or educational reasons” and “without expectation of compensation or future wages.”

The second prong relates to the issue: “no subterfuge to evade wage laws.” The defendant-organization “must also show that the volunteer arrangement is not a disguised employment relationship. Specifically, volunteer labor cannot:

- Replace paid employees
- Perform core operational functions the organization would otherwise pay staff to perform
- Serve as a workaround for staffing shortages

If either prong is not satisfied, California wage-and-hour laws apply—regardless of how the organization labels the relationship.” In other words, the courts “look beyond titles. The question is not what the arrangement is called, but what the individual is actually doing.”



And, with those instructions, the justices sent the case on its merry way back to the San Francisco trial judge to apply this two-pronged test at the outset and then figure out the rest.

Conclusion

There is much more “meat” to both the trial court and the appellate court rulings: Stay tuned for further exploration and commentary.

And – since we’re talking about “coercion” in performing services for a 501(c)(3) – is there any relevance to the “mandatory volunteerism” situations that are kicking in right now all around the United States under the new federal SNAP “work or alternative” requirements and later in the year under the new Medicaid-expansion eligibility rules.

Does this “employee vs. volunteer” test apply? Will participating 501(c)(3)s be clobbered down the road sometime with labor-code violations, having to make large amounts of back “minimum-wage” and “overtime” payments (and cascading penalties) to these “voluntolds.”

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