



california court of appeal addresses when nonprofits may properly utilize unpaid volunteers

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In a decision of significance to nonprofit organizations across California, the California Court of Appeal has recently clarified when nonprofits can properly treat individuals who donate their time as volunteers, rather than employees. (*Spilman, et al. v. Salvation Army* (2026) 2026 WL 35953).

In *Spilman*, the plaintiffs worked for the Salvation Army as part of a six-month residential substance abuse rehabilitation program. They received dormitory housing, meals, clothing, gratuities, and rehabilitation services, but were not compensated for their labor. They brought suit claiming that they were employees entitled to minimum wage and overtime. In response, the Salvation Army argued that they were volunteers, and therefore not entitled to wages. The trial court granted summary judgment for the Salvation Army, finding that the plaintiffs were not employees.

The Court of Appeal reversed, finding that the trial court had applied the wrong standard to distinguish a volunteer from an employee. In doing so, the Court adopted a new two-part test for determining whether a nonprofit has properly treated a worker as an unpaid volunteer, requiring the nonprofit to show that "(1) the worker freely agreed to work for the nonprofit to obtain a personal or charitable benefit, rather than for compensation, and (2) overall, the nonprofit organization's use of the volunteer labor is not a subterfuge to evade the wage laws."

For the first part of the test, the Court explained that in-kind benefits that are "contingent on the worker's labor and satisfactory performance" would "tend to indicate the benefits are compensation and thus weigh in favor of finding an employment relationship." Further, "the nonprofit should demonstrate that the individual chose to volunteer their services freely, without coercion by the nonprofit." Finally, the Court noted that the duration of a volunteer relationship

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may also be relevant, with longer term relationships tending to suggest an employment relationship.

For the second part, the Court explained that benefits given to volunteer workers should not be a "ploy for sidestepping wage protections." It further noted that using volunteers to replace or perform the same function as paid employees may suggest evasion of wage laws. Any other evidence "as to whether the working relationship is exploitative, indicating an evasion of the wage laws," must also be considered.

Spilman expands on the Court of Appeal's 2021 decision in *Woods v. American Film Institute*, which held that individuals may volunteer for nonprofit entities without becoming employees under California law, but did not create a general test for distinguishing between volunteers and employees.

The risks of improperly treating works as volunteers can be substantial, exposing a nonprofit organization to potential claims for unpaid wages, meal and rest breaks, expense reimbursement, penalties, and other benefits of employment.

If you have any questions regarding this decision, or your nonprofit organization's use of volunteers, MSK is able to assist.