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Donald W. Kramer  
Editor and Publisher  
Lisa T. Chatburn  
Managing Editor  
Virginia P. Sikes  
Tax Editor

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*Nonprofit Issues* ®  
P.O. Box 482  
Dresher, PA 19025-0482  
Phone (215) 542-7547  
1-888-NP-Issue  
Fax (215) 542-7548  
E-mail  
[info@nonprofitissues.com](mailto:info@nonprofitissues.com)  
[www.nonprofitissues.com](http://www.nonprofitissues.com)

## Agency employees "engaged in commerce" covered by FLSA

A nonprofit agency providing information, resources, and training to individuals throughout the Gulf Coast on disaster preparedness, response and recovery is likely to be covered by the Fair Labor Standards Act because its employees are likely to be "engaged in commerce or in the production of goods for commerce," a federal District Court in Texas has ruled. It has denied summary judgment against employees who claimed that they were not paid properly for overtime work.

Although the agency argued that it was local to Texas, the Court noted that it had a Louisiana office until June 2009 and that "use of the telephone or Internet between states can be sufficient to constitute commerce."

But "even economic activities that are purely intrastate in nature can be subject to federal regulation because their cumulative effects have a substantial effect on interstate commerce." It said the agency "helps hurricane victims along the Gulf Coast by assessing their post-disaster situations, determining their needs, and by locating and securing essential resources to help those who 'are in the process of rebuilding their lives.' Additionally, [the agency] operates a 'disaster kit' store on its website selling items such as generators, radios, first-aid kits, tents, and coolers. Even if these services and products are provided only in the state of Texas, as Defendants argue, it is nevertheless likely that these actions substantially affect interstate commerce. By helping disaster victims locate resources to get back on their feet, Defendants are undoubtedly helping people return to work, restore their businesses, and even resume interstate travel.... The cumulative effect of these activities will likely have a substantial effect on interstate commerce and thus are not exempt from the FLSA." (*Maxwell v. G.R.A.C.E Community Services*, S.D. TX, No. H-09-3989, 6/28/11.)

**In passing....** An appellate court in Florida has reversed summary judgment in favor of a nonprofit children's facility and allowed an employee to sue for wrongful discharge and retaliation when she claimed she was fired for raising concerns about the facility's violation of the confidentiality provisions of the Health Insurance Portability and Accountability Act ("HIPAA"). The Court ruled that there was conflicting evidence within the agency's affidavits and that there remained material questions of fact as to the actual reason for termination. (*Coleman v. Grandma's Place*, Dist. Ct. of App., FL, Fourth Dist., No. 4D10-1302, 6/29/11.)