

July-August 2015

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Donald W. Kramer
Editor and Publisher
Lisa T. Chatburn
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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
www.nonprofitissues.com

Workers do not show nonprofit housing group is under FLSA

A 501(c)(3) organization that operates soup kitchens, emergency shelters, and housing programs has not been shown to be subject to the Fair Labor Standards Act when two maintenance workers in its housing program failed to allege facts sufficient to show the organization was an enterprise involved in commerce or that they engaged in commerce themselves.

The maintenance workers claimed that they were owed overtime for answering emergency pages to fix problems outside of regular work hours and for the time they spent "on call" while holding pagers on off hours. A federal District Court in New York has ruled that they failed to plead facts bringing them under the protection of the Act.

To be covered by the FLSA, workers must show that they are employed by an enterprise engaged in interstate commerce, or that they are personally involved in the production of goods for commerce. The courts have held that an organization that performs religious, educational, or charitable activities does not perform these activities for a "business purpose," and thus does not constitute an enterprise unless the activities compete in the marketplace with ordinary commercial enterprises.

The workers claimed that the employer "routinely" competed in the marketplace with other commercial enterprises, sold properties to the general public, and derived a substantial part of their revenue from these commercial activities. The Court, however, found that the workers made only "conclusory allegations" and did not allege sufficient facts to plausibly plead that the organization was an enterprise under the Act.

The workers also alleged that they were personally engaged in commerce because they routinely used products manufactured in other states, bought goods from other states, and made interstate phone calls. But the Court said that activities "that simply affect or indirectly relate to interstate commerce are insufficient" and that the workers again failed to provide sufficient specific information on which to determine the issue. The Court dismissed the complaint without prejudice so that the workers could amend with additional specific allegations. (*Walker v. The Interfaith Nutrition Network*, E.D. NY, No. 14 CV 5419, 7/14/15.)