

Alert | Litigation



October 2021

GT Helps Palm Beach County Secure Dismissal of Wage-and-Hour Class Action Brought by Volunteers

In a case of first impression, on October 4, 2021, in *Adams v. Palm Beach County*, U.S. Magistrate Judge Bruce E. Reinhart of the Southern District of Florida dismissed with prejudice a putative class action brought by three plaintiffs against Palm Beach County under federal and Florida wage laws. This case may have far-reaching implications for public agencies and the operation of recreational facilities serving the public.

Plaintiffs were golf course attendants who signed up to volunteer at a golf course operated by the county. They alleged that they were county employees entitled to minimum wage payments. In their second amended complaint, all plaintiffs alleged that the county failed to pay plaintiffs a minimum wage, in violation of the federal Fair Labor Standards Act (FLSA) (Count I) and the Florida Minimum Wage Act (FMWA) and Article X §24 of the Florida Constitution (Count II). One of the plaintiffs alleged retaliation in violation of the FLSA (Count III).

The county argued that the plaintiffs had volunteered, and that they fell within the public agency volunteer exception to the minimum wage laws, 29 U.S.C. § 203(e)(4)(A) (the “Public Agency Volunteer Exception”). Plaintiffs argued, however, that the county did not qualify for the exception because the county had offered its volunteers “in-kind compensation” by allowing volunteers to enjoy rounds of golf at county-owned courses on certain conditions and when available, at a reduced green fee. The county

argued that any right to play golf at a reduced fee is not “compensation” under the FLSA, or, alternatively, is a reasonable benefit or nominal fee, and that plaintiffs did not have an objectively reasonable expectation of wages or the equivalent.

The court found that plaintiffs’ alleged belief they should be paid wages for their services would not be objectively reasonable. Most importantly, the court observed, the positions plaintiffs accepted were advertised as volunteer positions. The job posting did not mention wages. The job posting did list discounted golf as something the volunteer could “enjoy,” equivalent to being outdoors and getting to know others with similar interests. The court noted that working as a ranger or cart attendant at a public golf course is akin to other positions amenable to volunteerism, as set forth in the implementing regulations of the FLSA. *See* 29 C.F.R. § 553.104(b). In sum, the court found that it was not objectively reasonable for plaintiffs to expect wages when they had signed up for positions advertised for volunteers, the positions could be performed by volunteers, and for an extended period of time the plaintiffs had not received wages.

The court went on to find that, looking at the totality of the relationship between plaintiffs and the county, the ability to play golf at a reduced fee was a reasonable benefit or nominal fee consistent with the economic realities of the particular situation for purposes of the Public Agency Volunteer Exception. The court noted that providing the benefit to volunteers did not directly cost the county anything, and there was no indication that allowing the discounted rounds precluded others (who would pay full price) from using the courses. Further, the benefit could not be monetized by transfer to a third party. Although the discounted golf privilege accrued only after a minimum number of hours were worked, once implicated, the privilege was not tied to the number of hours worked. The court concluded that plaintiffs were receiving a reasonable, non-compensatory, limited, golf-related benefit for volunteering at a golf course owned by a public agency, the county.

Plaintiffs have indicated they plan to appeal. There are similar cases pending in other jurisdictions.

** The county was represented by Greenberg Traurig attorneys Lauren Whetstone, Bridget Berry, and Phillip Hutchinson, and assistant county attorney Anaili Medina Cure.*

Authors

This GT Alert was prepared by:

- [Bridget A. Berry](#) | +1 561.650.7912 | berryb@gtlaw.com
- [Phillip H. Hutchinson](#) | +1 561.650.7952 | hutchinsonp@gtlaw.com
- [Lauren R. Whetstone](#) | +1 561.650.7971 | whetstonel@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. [~] Houston. Las Vegas. London. ^{*} Los Angeles. Mexico City. ⁺ Miami. Milan. ^{*} Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul. [∞] Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. [^] Tokyo. ^{*} Warsaw. [~] Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer’s legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. [~]Greenberg Traurig’s Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ^{}Operates as a separate UK registered legal entity. ⁺Greenberg Traurig’s Mexico City office*

is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2021 Greenberg Traurig, LLP. All rights reserved.