

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11065

DAVID ADAMS,
MICHAEL SHAW,
GERALD KASMERE,
on behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

versus

PALM BEACH COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-80127-BER

Before WILLIAM PRYOR, Chief Judge, and JILL PRYOR and MARCUS, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether golf attendants who provided services at Palm Beach County golf clubs in exchange for discounted golf were “employees” under the Fair Labor Standards Act, *see* 29 U.S.C. § 203(e). David Adams, Gerald Kasmere, and Michael Shaw seek to represent a class of bag-drop attendants, driving-range attendants, and course rangers at County-owned world-class golf clubs. The attendants allege that the County’s use of their services violated the minimum-wage and anti-retaliation provisions of the Act, *id.* §§ 206, 215(a)(3), and the Florida Minimum Wage Act and the Florida Constitution, FLA. STAT. § 448.110; FLA. CONST. art. X, § 24. The district court dismissed the attendants’ complaint because it concluded that the attendants were public-agency volunteers and not employees under the Act and Florida law. We affirm.

I. BACKGROUND

David Adams, Gerald Kasmere, and Michael Shaw served as golf attendants at the Osprey Point Golf Club, a “world-class” golf club owned by Palm Beach County. The County owns four such clubs, which it operates for profit. The attendants responded to a County Parks and Recreation Department advertisement seeking “volunteers” to perform services in exchange for discounted golf, among other benefits. The advertisement states, “Volunteers Needed”; explains that “[v]olunteers serve as course rangers,

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driving range attendants and bag drop attendants”; and promotes that “Osprey Point volunteers enjoy being outdoors, getting to know others with similar interests and reduced fees to play and practice golf.”



Osprey Point Golf Course



Project Description:

This is a high volume 27 hole golf facility that opened in 2010. The course is the first in Florida to receive Audubon Certified Classic Sanctuary status. Volunteers serve as course rangers, driving range attendants and bag drop attendants. Hours vary. Nights and weekends preferred. Osprey Point volunteers enjoy being outdoors, getting to know others with similar interests and reduced fees to play and practice golf.

- Minimum Age requirement: 16 with driver's license. Golf Cart detailing is available to those without a driver's license on a limited basis.
- Must enjoy serving guests and fellow staff members, possess a positive personality, be flexible in job assignments, be a team player.
- Some golf knowledge preferred but not required.
- Must be available at least 6 months per year to qualify

****This site doesn't provide court ordered volunteer hours.**

| | |
|----------------------------------|---|
| Volunteers Needed: | Unlimited <input type="checkbox"/> |
| Project Meeting Location: | Osprey Point Golf Course 12551 Glades Road Boca Raton, FL 33498 |

The attendants performed services including greeting customers; carrying and loading customers' golf clubs; cleaning balls, clubs, and carts; retrieving carts from and returning carts to cart barns; patrolling the range and policing the pace of play; raking sand traps and filling divots; collecting trash; and retrieving balls from the driving range. Attendants were not allowed to choose their duties and were required to follow specific service rules,

including not sitting while on duty. According to the attendants, their services “enhance[d] the value of the golfing experience,” were “essential to attract customers,” and were “integral to the operation” of the County’s clubs. Privately owned golf clubs must pay wages to attendants providing comparable services.

The County treated attendants as volunteers. Attendants were allowed to accept tips but were neither promised nor paid wages. But attendants who worked at least one seven-hour shift a week were promised “unlimited” rounds of golf at substantially discounted rates, limited to certain days, times, and locations. The County typically charged \$96 for a round of golf at Osprey Point, but eligible volunteers could play for only \$5. The County offered similar discounts to volunteers at its other courses. The attendants calculate that someone who worked the required seven hours a week, and who played five rounds of golf a week, could receive \$23,660 in savings a year (or \$65 an hour worked).

The attendants participated in the County program for multiple years: Adams provided services for almost four years, Kasmere for over four years, and Shaw for over seven years. All three availed themselves of the benefit of reduced golf fees. The complaint provides information on the attendants’ use of their discounts over only specific time periods. It explains that from October 2016 through November 2019, Adams received 31 discounted rounds of golf amounting to \$2,821 in savings, for an average value of \$890 a year or \$74 a month. From October 2016 through March 2020, Kasmere received 95 discounted rounds of golf amounting to \$8,645 in

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savings, for an average value of \$2,470 a year or \$206 a month. And from February through August 2019, Shaw received 43 discounted rounds of golf amounting to \$3,913 in savings, for an average value of \$559 a month.

Kasmere was furloughed during the Covid–19 pandemic and attempted to return to Osprey Point in October 2020. The Osprey Point manager told Kasmere that the club “needed” attendants to return because “some workers who had previously been in those positions were unable or unwilling to return to work because of the pandemic.” The manager also explained that, as part of the club’s Covid policies, attendants would no longer clean golf clubs or load customers’ golf bags, and tip jars would be removed. But when Kasmere complained that removing the tip jars “would make it even harder” on the attendants, the manager informed Kasmere that no positions were available.

The attendants filed a putative class action. The operative complaint alleges violations of the minimum-wage provision of the Fair Labor Standards Act, 29 U.S.C. § 206, (count I); the Florida Minimum Wage Act and Florida Constitution, FLA. STAT. § 448.110; FLA. CONST. art. X, § 24, (count II); and (as to Kasmere only) the anti-retaliation provision of the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3), (count III). The district court dismissed the complaint for failure to state a claim because it concluded that the attendants were public-agency volunteers not covered under the federal Act or Florida law. We dismissed an earlier appeal for lack of jurisdiction because the district court failed to address the claims of

additional opt-in plaintiffs, *Adams v. Palm Beach County*, No. 21-13825, 2022 WL 17246908, at *3 (11th Cir. Nov. 28, 2022), and on remand, the district court dismissed as to the opt-in plaintiffs for the reasons stated in its previous order.

II. STANDARD OF REVIEW

We review *de novo* a dismissal for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Ounjian v. Globoforce, Inc.*, 89 F.4th 852, 857 (11th Cir. 2023). We limit our consideration to the pleadings and the attached exhibits. *GSW, Inc. v. Long County*, 999 F.2d 1508, 1510 (11th Cir. 1993).

III. DISCUSSION

An individual must be an “employee” under the Fair Labor Standards Act to be protected by its minimum-wage and anti-retaliation provisions. *See* 29 U.S.C. §§ 206(a), 215(a)(3). The Act defines an “employee” as “any individual employed by an employer,” *id.* § 203(e)(1), and it defines “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee,” including a public agency, *id.* § 203(d). The touchstone of the employee inquiry is one of “economic reality.” *Tony & Susan Alamo Found. v. Sec’y of Lab.*, 471 U.S. 290, 301 (1985) (citation and internal quotation marks omitted).

The Act exempts a public-agency volunteer from its definition of employee:

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The term “employee” does not include any individual who volunteers to perform services for a public agency . . . if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee . . . ;
and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

29 U.S.C. § 203(e)(4)(A). Whether an individual is a volunteer or an employee “is a matter of law to be determined by the court.” *E.g.*, *Purdham v. Fairfax Cnty. Sch. Bd.*, 637 F.3d 421, 428 (4th Cir. 2011); *see also Castillo v. Givens*, 704 F.2d 181, 185 (5th Cir. 1983).

The Act does not define “volunteer.” But Department of Labor regulations provide that a volunteer is an “individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.” 29 C.F.R. § 553.101(a). An individual need “only be motivated *in part*” by civic or charitable reasons to qualify as a volunteer. *McKay v. Miami-Dade County*, 36 F.4th 1128, 1138 (11th Cir. 2022) (emphasis added). And we agree with our sister circuits that the regulatory definition should be applied “in a commonsense manner, which takes into account the totality of the circumstances surrounding the relationship between the individual providing services and the entity for which the services are provided.” *Purdham*, 637 F.3d at 428 (citation and internal

quotation marks omitted); *see also Cleveland v. City of Elmendorf*, 388 F.3d 522, 528 (5th Cir. 2004) (we review “the objective facts surrounding the services performed to determine whether the totality of the circumstances” establishes volunteer status).

To determine whether the public-agency volunteer exemption applies, we must evaluate whether the attendants fall under the statutory definition because they served a public agency and received either “no compensation” or only “expenses, reasonable benefits, or a nominal fee” for their services. 29 U.S.C. § 203(e)(4)(A)(i). We must also evaluate whether the attendants fall under the regulations, by being at least “in part” motivated by “civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation.” *McKay*, 36 F.4th at 1137 (quoting 29 C.F.R. § 553.101(a)). We exercise common sense and consider the totality of facts and circumstances when applying the regulatory definition. *See City of Elmendorf*, 388 F.3d at 528.

No party disputes that the attendants served a public agency, so we proceed in two parts. First, we explain that the attendants received discounted rounds of golf as “reasonable benefits” for their services. *See* 29 U.S.C. § 203(e)(4)(A)(i). Second, we explain that the attendants cannot prove any “promise, expectation or receipt” of employee compensation, *see* 29 C.F.R. § 553.101(a), because they applied for “volunteer” positions advertised to provide only “being outdoors, getting to know others with similar interests and reduced fees to play and practice golf” as benefits. We conclude

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that the attendants are not employees and cannot state a minimum-wage or anti-retaliation claim under the Act or Florida law.

A. The Attendants are Statutory Employees Who Received Only “Reasonable Benefits” for Their Services.

The attendants are public-agency volunteers because they received discounted golf as “reasonable benefits”—not inadequate compensation—for their services. *See* 29 U.S.C. § 203(e)(4)(A)(i). The attendants argue that they were employees who worked for “compensation,” but less than minimum wage, in the form of thousands of dollars of golf discounts. We disagree. Reduced fees on golf did not trigger the loss of the attendants’ volunteer status.

Whether benefits cause the loss of volunteer status “can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.” 29 C.F.R. § 553.106(f). Likewise, the Supreme Court has required us to anchor to “economic reality” when asking if an individual is an employee protected by the Act. *See Alamo*, 471 U.S. at 301 (citation and internal quotation marks omitted). The Act instructs us to evaluate only the benefits that the attendants actually received. 29 U.S.C. § 203(e)(4)(A)(i) (volunteer exemption turns on what an individual “receives” or “is paid”).

The attendants cannot prove that reduced-fee access to a world-class golf club was, as a matter of economic reality, anything more than a perk for volunteer services. *See Alamo*, 471 U.S. at 301. Adams, Kasmere, and Shaw applied for positions plainly advertised as “volunteer” positions, with no mention of wages or cash

payment. The only pecuniary benefits that the attendants were promised or received were reduced fees for golf and the opportunity to receive tips from customers during some period that they served as attendants. To be sure, the Supreme Court has held that in-kind benefits may constitute “wages in another form,” which qualify as compensation under the Act. *See Alamo*, 471 U.S. at 293. But the *Alamo* Court was referring to “food, shelter, clothing, transportation and medical benefits”—in other words, goods and services that could substitute for wages “under the economic reality test of employment.” *Id.* (citation and internal quotation marks omitted). Reduced fees on rounds of golf—an inherently recreational activity—are hardly analogous. And the monthly value of the attendants’ savings was minimal: over the periods specified in the pleadings, Adams received 31 discounted rounds of golf valued at \$2,821 in savings, or about \$74 a month; Kasmere received 95 discounted rounds of golf valued at \$8,645 in savings, or about \$206 a month; and Shaw received 43 discounted rounds of golf valued at \$3,913 in savings, or about \$559 a month. *Cf. Purdham*, 637 F.3d at 434 (yearly stipends of \$2,114 and \$2,073 did not cause loss of golf coach’s volunteer status).

B. The Attendants are Volunteers under the Regulations.

The attendants assert that they were not volunteers under the regulations for two reasons. First, they argue that they did not engage in services traditionally associated with volunteerism. The County replies that their services *did* provide civic benefits for the County’s residents. Second, the attendants argue that the district

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court erred by relying on the attendants' lack of expectation of compensation. The County replies that the district court correctly applied an "objective reasonableness" test—the attendants were not promised and could not reasonably have expected any compensation. The County is correct on both points.

The regulations define a volunteer as an individual who serves for "civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered." 29 C.F.R. § 553.101(a). The regulations provide the following examples of volunteer activities:

[I]ndividuals may volunteer as firefighters or auxiliary police, or volunteer to perform such tasks as working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

Id. § 553.104(b). But the regulations also state that there "are no limitations or restrictions imposed by the [Act] on the types of service which private individuals may volunteer to perform for public agencies." *Id.* § 553.104(a).

The attendants argue that their activities were "qualitatively different" from the examples of volunteerism listed in the regulations, and that they did not work to "improve their community or the lives of its residents." But the regulations do not limit the kinds of activities that qualify as volunteer services. *Id.* Nor do the

attendants dispute that public golf courses provide County citizens with “civic” benefits. *See McKay*, 36 F.4th at 1137. For example, municipalities traditionally maintain public parks and outdoor recreational facilities to enhance “health and quality of life” in the community; public courses are a more affordable “gateway” option for golf newcomers; and the County maintained a teaching facility that introduced newcomers to golf. The attendants also acknowledge that their services were crucial to the County’s ability to maintain golfing courses for the public: the attendants were “essential to attract customers” and were “integral to the operation” of the course. So by their own admission, the attendants chose to serve in positions that they knew were crucial to providing civic benefits to County citizens.

The regulations also provide that any “promise, expectation or receipt of compensation for services rendered” precludes the finding that an individual is a public-agency volunteer. 29 C.F.R. § 553.101(a). But the receipt of “reasonable benefits” does not qualify as the receipt of compensation. *Id.* § 553.106(a). And any “expectation” of compensation must be “objectively reasonable.” *Brown v. N.Y.C. Dep’t of Educ.*, 755 F.3d 154, 166 (2d Cir. 2014). To find otherwise would allow individuals to “wish themselves (however unreasonably) into being owed . . . wages, despite the (reasonable) belief of public agencies that they were accepting volunteered services.” *Id.*

The district court correctly ruled that the attendants were not promised, could not have reasonably expected, and did not receive

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any “compensation” for their services. As we have explained, the attendants were not promised and did not receive “compensation” because reduced golf fees are not “wages in another form” under any economic reality. *See Alamo*, 471 U.S. at 293. Nor does the complaint establish that the attendants had an objectively reasonable expectation of compensation. The County’s advertisement, featuring benefits like “being outdoors, getting to know others with similar interests and reduced fees to play and practice golf,” could not be objectively construed as a promise of payment for work. The County unequivocally advertised the position to volunteers. Not even the attendants assert that they were promised wages. And Adams, Kasmere, and Shaw remained with the County program, under its terms, for nearly four, over four, and over seven years, respectively. We agree with the district court that it is unreasonable “to expect wages when you sign up for a position advertised for volunteers” and then “do not receive wages for an extended period of time.”

The district court did not err. The attendants were not “employees” under the Act. And the attendants’ Florida law claims fail because the Florida Act must be interpreted “as consistent with” the federal Act. *Llorca v. Sheriff, Collier Cnty.*, 893 F.3d 1319, 1328 (11th Cir. 2018) (“Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations shall be eligible to receive the state minimum wage pursuant to [the Florida Constitution] and [the Florida Minimum Wage Act].” (quoting FLA. STAT. § 448.110(3))).

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IV. CONCLUSION

We **AFFIRM** the judgment in favor of Palm Beach County.