

Employee Can't Count To 15 Under ADA Using Volunteers Or Other Companies' Employees

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One of the most significant ongoing type of employment issues is the treatment as employees of individuals the employer thought were not -- [interns](#) are found to be entitled to back wages, nominal [independent contractor status](#) is repeatedly challenged in court and [temporary agency workers](#) are at risk of being treated as the customer's employees as well. Workers found to be employees are entitled to the protections of the various employment laws. A secondary but sometimes equally important implication of employee status is whether an employer is subject to the various thresholds that trigger the coverage of employment laws.

In [Solander v. South Ponderosa Stables](#), the U.S. District Court for the District of Arizona found that the employer did not have the requisite 15 employees to be covered under the ADA or its state law counterpart. Therefore, a stable hand's ADA case could not proceed. Solander tried in two different ways to get to 15 employees. First, he alleged that volunteers at the stable should be counted as employees because they were supervised just as were the employees. The court, however, found that the other tests for volunteers to be considered employees were not met. For example, the volunteers receive no formal training or formal instruction. Solander next tried to count the employees of two other companies with the same owner. Indeed, apparently separate companies can be aggregated for purposes of meeting statutory thresholds. However, in this case the court found there was no basis for such a conclusion (such as common management of employee relations) other than the common ownership.

Employers using volunteers and/or with entities with common ownership should consult with counsel to ensure they are on the right side of this line as South Ponderosa Stables was found to be. While it is not evident in the court's decision here that this small employer did so, as is so often the case some simple documentation such as setting forth the volunteer's roles and expectations can be invaluable in defending claims -- whether they are from a volunteer claiming employee status, or another employee claiming the volunteers have employee status in hopes of meeting a statutory threshold.

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