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OPINION	:	No. CV 78-47
	:	
of	:	<u>March 14, 1979</u>
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SUBJECT: VOLUNTEER FIRE FIGHTERS—Volunteer fire fighters are not employees under the California Occupational Safety and Health Act.

The Honorable R. T. Rinaldi, Executive Officer, Occupational Safety and Health Standards Board, has requested an opinion on the following question:

Are volunteer fire fighters “employees” under the California Occupational Safety and Health Act?

The conclusion is:

Volunteer fire fighters (assuming the term “volunteer” refers to fire fighters who are not paid) are not employees under the California Occupational Safety and Health Act.

ANALYSIS

The purpose of the California Occupational Safety and Health Act¹ (hereafter OSHA) is to “assure safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health.” (§ 6300.)

Under OSHA the employer must furnish a safe and healthy place of employment (§ 6400) and utilize the devices, safeguards, practices and every other thing “reasonably necessary to protect the life, safety, and health of employees.” (§ 6401; see also §§ 6402–6408.)

However, absent the employer-employee relationship, an employer is not bound by the safety and health requirements imposed by OSHA, which would otherwise be applicable under that Act. (*Elder v. Pacific Tel. & Tel. Co.* (1977) 66 Cal. App. 3d 650, 662–663; see also 13 Ops. Cal. Atty. Gen. 48 (1949), and § 6304.5.) Thus the present question: are volunteer fire fighters “employees” under OSHA? (For purposes of this opinion we assume the term “volunteer fire fighters” refers to fire fighters who are not paid for their services.)

OSHA defines the term “employee” as follows:

“‘Employee’ means every person who is required or directed by an employer, to engage in any employment, or to go to work or be at any time in any place of employment.” (§ 6304.1.)

Since the terms “employment” and “place of employment” are components in the definition of “employee,” the meaning of “employee” depends in turn upon the meaning of these two terms. Considering first the term “employment” section 6303 subdivision (b) defines it to mean:

“. . . the carrying on of any trade, enterprise, project, industry, business, occupation or work including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire except household domestic service.” (§ 6303 subd. (b).)

¹ (Lab. Code, §§ 6300–6708.) Hereafter all section references are to the Labor Code unless otherwise specified.

Of significance here is the fact that this definition utilizes the phrase, “work for hire.” As stated in *Ferrell v. Industrial Commission of Arizona* (1955) 288 P.2d 492, 494, “The word ‘hire’ connotes payment of some kind.” And see *Reynolds v. Reynolds* (1936) 14 Cal. App. 2d 481, 483, where the court notes that the word “salary” is synonymous with the word “hire.”

In thus specifying that employment constitutes those enumerated activities in which one is “engaged or permitted to work for *hire*” (emphasis added) the term “employment,” under OSHA, contemplates work that is done for compensation.

The term “place of employment” is defined in OSHA as “any place, and the premises appurtenant thereto, where employment is carried on” (§ 6303, subd. (a).) Thus again the definition requires compensated work.

Describing the jurisdiction of the Division of Industrial Safety to enforce OSHA, section 6307 provides:

“The division has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment.”

This delineation of OSHA’s enforcement jurisdiction is thus confined to the regulation of compensated work and of those places where compensated work is performed (see also § 6308, and see 24 Ops. Cal. Atty. Gen. 290, 291–292 (1954)). It thus appears that all of the provisions relating to the employee status under OSHA are persistently characterized by the element of compensated work. This would therefore indicate that the legislature did not intend to extend the protection of OSHA to uncompensated workers; i.e. volunteers. (See *Beaver Plumbing Company* (1976) Cal-OSHA Digest, ¶ 11,561, and *Bill’s Cesspool Service* (1976) Cal-OSHA Digest, ¶ 10,952.)

An even more cogent indication of the validity of this proposition, and one which is specifically related to volunteer fire fighters, is the fact that the related Workers’ Compensation Act (§ 3200 *et seq.*) expressly designates as employees “[e]ach member registered as an active firefighting member of any regularly organized volunteer fire department [officially recognized and supported by the local government entity]” (§ 3361.)

In OSHA there is no similar designation of volunteer fire fighters as employees. It would seem appropriate to assume that having expressly designated volunteer fire fighters to be employees in the closely related Workers' Compensation Act, the Legislature would have also so designated them in OSHA had the Legislature intended them to be included as employees under that Act. (See 29 Ops. Cal. Atty. Gen. 211, 212 (1957).)

As stated in *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal. App. 3d 881, 891: "Where a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted." (See also *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal. App. 3d 1, 8.)

We therefore conclude that volunteer fire fighters are not employees under OSHA.
