OLR RESEARCH REPORT

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OLR BACKGROUNDER: OSHA LAWS AND VOLUNTEER FIRE DEPARTMENTS

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This report describes the state and federal OSHA laws' application to volunteer fire departments, particularly in light of the state Supreme Court's 2011 decision in *Mayfield v. Goshen Volunteer Fire Company, Inc* (301 Conn. 739 (2011)).

SUMMARY

In 2011, the state Supreme Court ruled in *Mayfield v. Goshen Volunteer Fire Company, Inc.* that the Goshen Volunteer Fire Department was not a political subdivision of the state and thus not subject to the state's Occupational Safety and Health Act (CONN-OSHA), which otherwise provides job safety oversight for state and municipal employees. Because federal OSHA law covers private sector employees and does not generally cover volunteer fire fighters, the ruling allows the Goshen volunteers, and possibly other volunteer fire departments operating under certain circumstances, to be outside the jurisdiction of both federal and state OSHA laws.

FEDERAL AND STATE OSHA LAWS

In 1970, Congress enacted the Occupational Safety and Health Act (OSHA) to encourage and oversee workplace safety standards. With some exceptions, the act covers all private sector employers and their

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employees, but does not apply to employees of federal, state, or local governments. Among other things, the act created the Occupational Safety and Health Administration to develop workplace safety regulations and conduct inspections to enforce them.

The act also encourages states to develop and operate their own state job safety and health programs by funding up to 50% of an OSHA-approved state program's operating costs. As part of the approval process, participating states must have an OSHA program that (1) covers its state and local government workers and (2) is at least as effective as the coverage for private sector employees. According to the U.S. Department of Labor, 22 states currently operate "complete" state plans, in which the state oversees and enforces safety standards for the private and public sectors with federal regulators suspending any concurrent OSHA enforcement.

The federal law also allows states to develop plans limited to covering public sector employees. Five states, including Connecticut, currently operate under such plans. Enacted in 1973, CONN-OSHA applies to the state and its political subdivisions as "employers" and anyone "engaged in service" to them "in a business of his employer" (CGS § 31-367). CONN-OSHA adopts all federal OSHA standards that would relate to public sector employees by reference.

Although the federal and state OSHA standards are identical, the maximum penalties for CONN-OSHA violations are typically lower than those for violations of the federal standards. Table 1 shows the fines for federal and state OSHA violations.

Table 1: Federal vs. CT OSHA Fines

Violation	*Federal OSHA Fine*	*CONN-OSHA Fine*
Non-serious violation	Up to $7,000 per violation	Up to $1,000 per violation
Serious violation	Mandatory $7,000 per violation	Up to $1,000 per violation
Willful violation	$5,000 to $70,000 per violation	Up to $10,000 per violation
Repeated violation	Up to $70,000 per violation	Up to $10,000 per violation
Failure to fix a prior violation	Up to $7,000 per day	Up to $1,000 per day
Falsifying records	Up to $10,000 and/or up to 6 months in prison	Up to $10,000 and/or up to 6 months in prison
Violating posting requirements	Up to $7,000 per violation	Up to $1,000 per violation

MAYFIELD V. GOSHEN VOLUNTEER FIRE CO., INC

According to the state Department of Labor, the Connecticut Occupational Safety and Health Division, which oversees CONN-OSHA, always interpreted CONN-OSHA as giving it jurisdiction over the state's volunteer fire departments. However, the state Supreme Court overturned this interpretation, under certain circumstances, with its 2011 *Mayfield* decision.

The case arose when the Goshen Volunteer Fire Department denied the state access to its firehouse for a CONN-OSHA inspection. Labor Commissioner Patricia Mayfield applied to the Superior Court for a warrant to inspect the firehouse but the court dismissed the application for a lack of subject matter jurisdiction. The court reasoned that the fire department was an independent corporation and not a political subdivision of the state that should be considered an "employer" under CONN-OSHA. Commissioner Mayfield appealed the decision, which was upheld by the Supreme Court in August 2011.

The Supreme Court agreed that the Goshen fire department was not a political subdivision of the state and could not be considered an "employer" subject to CONN-OSHA. However, the court stated that its decision did not necessarily apply to all volunteer fire departments. It applied a two-pronged test that considered if the department was (1) created directly by the state to constitute a department or administrative arm of the government or (2) administered by individuals controlled by public officials and responsible to them or to the general electorate. In applying this test to the Goshen fire department, the court noted a number of factors leading to the conclusion that the department was not a political subdivision covered by CONN-OSHA, including:

1. the department is organized as an independent nonstock corporation and was not created by legislation,

2. all members of the department are volunteers who receive no salary or pension,

3. the department has its own bylaws and constitution,

4. the town plays no role in operations or selecting department officers and no department members are directly accountable to the state or electorate,

5. the town has an oral contract with the department that can be terminated with 60 days notice, and

6. although the department leases its land and building from the town for $1 per year and many of the department's vehicles are town financed, this financial relationship does not make the department part of the town or give the town any authority to govern department membership or operations.

The Court's decision notes that other volunteer fire departments that are more closely governed by their municipalities could fall under CONN-OSHA's jurisdiction. It also notes that the court did not consider if the Goshen volunteers were "employees" of the town, instead of the fire department, because the commissioner did not pursue that argument.

As the Court recognized, its decision opens the possibility that other volunteer fire departments with circumstances similar to Goshen's could fall outside the jurisdiction of both federal OSHA and CONN-OSHA inspectors. Federal OSHA does not consider volunteer fire fighters to be "employees," and thus does not include them under its jurisdiction (U.S. Dept. of Labor, OSHA, Standard Interpretations (April 2, 1996) (letter from Raymond Donnelly, director of the Office of General Industry Enforcement, to Matt Lipson, San Luis Obispo Fire Association)).

For states with OSHA-approved plans covering only the public sector, such as Connecticut, federal OSHA generally allows the states to determine whether to include volunteers as employees of state or local governments under state law. Otherwise, federal OSHA only applies to a volunteer department if it was established as a private sector entity and hires paid employees, in which case it would be considered a private sector employer. (U.S. Dept. of Labor, OSHA, Standard Interpretations (November 7, 2008) (letter from Richard E. Fairfax, director, Directorate of Enforcement Programs, to Philip C. Stittleburg, chairman of the National Volunteer Fire Council)). Federal OSHA Standard Interpretation letters can be found at http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=INTERPRETATIONS&p_toc_level=0&p_keyvalue=.

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