In Muzaffar v. Aurora Health Care Southern Lakes, Inc., 2013 WL 6199233 (E.D. Wis. Nov. 27, 2013), the federal district court for the Eastern District of Wisconsin held that the Emergency Medical Treatment and Active Labor Act (“EMTALA”) anti-retaliation provision applied to protect a private, non-employed physician with staff privileges at a hospital from retaliation by the hospital for reporting patient transfers that he believed violated EMTALA.

Congress enacted EMTALA in 1986 to remedy a perceived problem of “patient dumping” by hospitals, where patients unable to pay for emergency medical treatment would be denied such treatment or transferred before their conditions had stabilized. The enforcement mechanisms of EMTALA are two-fold: first, patients can maintain a private right of action against hospitals for damages sustained as a result of the hospital’s actions; second, the statute provides that hospital employees can report violations of EMTALA without fear of retaliation or adverse employment actions taken by the hospital. This second mechanism encourages and provides protection for employee whistleblowers. EMTALA, however, does not define the phrase “hospital employee” as used in the whistleblower provisions.

Over the hospital’s objections that the physician maintains his own private practice office, does not have an employment contract with the hospital, and does not receive compensation or employee benefits, the court ruled that the physician should be deemed an “employee” for purposes of EMTALA. Unlike cases that have held that physicians with staff privileges are not employees for purposes of other federal statutes, such as Title VII of the Civil Rights Act of 1964, the district court reasoned that the whistleblower protection provisions of EMTALA are merely enforcement mechanisms for the statute’s primary purpose of preventing patient dumping. The court reasoned that physicians with staff privileges are in an advantageous position to observe the denial of emergency treatment to patients. According to the court, not considering them “employees” under EMTALA would frustrate the purpose of the statute.

The takeaway for hospitals is that physicians with privileges, and without an employment contract, may be deemed employees for purposes of reporting a hospital’s possible violations of EMTALA. Care should be taken in dealing with medical staff privilege issues where a non-employed staff physician has reported an EMTALA violation.