

PUBLICATION

Are Your Internship Practices Putting You At Risk?

July 15, 2013

A surge of lawsuits focusing on the common practice of employing unpaid interns could be coming after a judge found that two Fox Searchlight production interns were not compensated legally. Countless companies, large and small, open the doors to their offices, welcoming interns eager to add experience to their resumes for little or no pay. But as a result of the multitude of new lawsuits challenging the practice, the unpaid internship is under assault.

The State of New York is leading the way, with employment lawyers filing lawsuit after lawsuit against media companies over unpaid internships. On June 11, 2013, the U.S. District Court for the Southern District of New York ruled in favor of interns Eric Glatt and Alexander Footman finding that they did not fall within the Fair Labor Standards Act's (FLSA) unpaid "trainee" exception.

Judge William H. Pauley, applying U.S. Department of Labor criteria, found the interns did not receive training similar to that in an educational environment, as they performed routine tasks that otherwise would have been performed by paid employees. The court also held that Fox Searchlight was the "primary" beneficiary of the internships.

Although both Glatt and Footman understood that their internships would be unpaid, the court reiterated that FLSA "does not allow employees to waive their entitlement to wages."

On the heels of the victory in Fox Searchlight, plaintiffs firms have filed suit against companies such as NBC Universal, Warner Music Group Corp. and Gawker Media LLC since June 11, with the same or similar allegations related to unpaid interns.

The threat of multi-plaintiff/class litigation is not just a problem for employers operating in New York State, as the FLSA is federal law and applies nation-wide and because these unpaid intern plaintiffs *have been winning significant battles on critical issues such as classification and class action status*, thus creating new federal law, which can be persuasive authority in the jurisdictions that your business operates.

Many employers may not be aware that it is fairly difficult to meet all of the legal requirements for an unpaid internship. According to the U.S. Department of Labor, an unpaid internship is only lawful in the context of an educational training program, when the interns do not perform productive work and the employer derives no benefit. Boiled down, there are six criteria handed down from the Department of Labor, all of which an unpaid internship must meet in order to be legal:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment.
2. The internship experience is for the benefit of the intern.
3. The intern does not displace regular employees, but works under close supervision of existing staff.
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded.
5. The intern is not necessarily entitled to a job at the conclusion of the internship.

6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

It is imperative that employers review their policies and practices in light of these new developments to make sure that they remain compliant.

For questions about these or any employment-related issue, please reach out to any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.