

Court Rules Unpaid Interns Should Have Been Paid Employees

INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

The FLSA requires most employees, including interns, to be compensated for their services. Unpaid internships in the public sector and for non-profit charitable organizations are generally permissible. However, interns in the “for-profit” private sector generally must be paid at least the minimum wage and receive overtime compensation. There is a very limited exception to this rule for “trainees” who participate in an internship program for their own educational benefit.

According to the DOL, to qualify for the trainee exception, an unpaid internship must meet all these criteria:

- The internship is similar to training that would be given in an educational environment (even though it includes actual operation of the employer’s facilities);
- The internship experience is for the benefit of the intern;
- The intern does not displace regular employees, but works under close supervision of existing staff;
- The employer that provides the training receives no immediate advantage from the activities of the intern and on occasion its operations may actually be impeded;
- The intern is not necessarily entitled to a job at the conclusion of the internship; and
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

APPLYING THE INTERNSHIP RULES

In the Fox Searchlight case, the court ruled that the interns had been improperly classified as unpaid interns and should have been paid employees covered by the FLSA and New York state law. The court found that, considering the totality of the circumstances, the interns did not fall within the narrow “trainee” exception of the FLSA.

The court’s conclusion was based on its analysis of the six criteria described above, since the FLSA standard also applies to New York state law. Specifically, the court noted the following issues related to these interns:

- The interns did not receive any formal education or training during the internship and did not acquire any new skills aside from those specific to the back office of “Black Swan.” They gained experience like their paid co-workers, not because the internship was engineered to be more educational than a paid position.
- The benefits the interns received, such as resume listings, job references and an understanding of movie production offices, were incidental to working like any other employee and not the result of an internship structured to benefit them. However, the company received the benefits of their unpaid work.
- The interns performed routine but essential tasks that would have been performed by regular employees. These tasks included things like obtaining documents for personnel files, tracking and reconciling purchase orders and invoices, organizing filing cabinets, making photocopies, answering phones and running errands.

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- Searchlight did not dispute that it received a benefit from the interns' work and provided no evidence that the interns ever impeded work, which trainees would typically do.
- There was no evidence that the interns were entitled to jobs at the end of the internship or thought they would be. The court did not elaborate on this point.
- The court acknowledged that the interns understood they would not be paid for their work. However, the court discounted the importance of this factor because the FLSA does not allow employees to waive their entitlement to wages.

The court stated that the interns had essentially completed the work of paid employees—organizing filing cabinets, making photocopies, taking lunch orders, answering phones—which “provided an immediate advantage to their employer.” Any benefits the interns may have received resulted from having worked like any other employee, not as part of an internship program designed to be uniquely educational to the interns and of more value to them than to the employer.

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.