



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Appeals Court Rejects DOL's Test for Determining Employment Status of Interns

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On July 2, 2015, the Second Circuit Court of Appeals vacated the decision of the lower court in Glatt v. Fox Searchlight Pictures, that unpaid interns who worked on Fox Searchlight's film "Black Swan" were employees and entitled to payment of wages under the Fair Labor Standards Act (FLSA). In so doing, the Second Circuit rejected the rigid six-point test employed by the United States Department of Labor to determine the employment status of interns in favor of a test that recognizes that the purpose of a bona-fide internship is to integrate classroom learning with practical skill development in a real-world setting.

In its decision, the Second Circuit proposed that the primary question to be determined in considering the employment status of an intern is whether the intern or the employer is the "primary beneficiary" of the relationship and set forth a non-exhaustive list of factors to be considered in making that determination. These factors, none of which is to be considered dispositive, include the extent to which (1) the intern and employer understand that there is no expectation of compensation; (2) the internship provides training similar to that which would be given in an educational environment; (3) the internship is tied to the intern's formal educational program; (4) the internship accommodates the intern's academic commitments; (5) the internship's duration is limited to the period in which the internship provides the intern with beneficial learning; (6) the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and (7) the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The standard adopted by the Second Circuit recognizes that the determination of employment status is dependent on the circumstances of the particular internship, and will make it much more difficult for interns to establish employment status where there is a strong nexus between the internship and the intern's education.

Client Tip: *Unpaid internships have faced increased scrutiny in recent years. This decision represents a glimmer of hope for internship programs established by colleges and universities. However, disagreement among the federal courts on this*

issue signal that the U.S. Supreme Court will have to weigh in soon.