

Courts Continue to Reject the DOL's Six factor Test For Determining the Employment Status of Interns

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In a pithy decision issued on September 11, 2015, the Eleventh Circuit Court of Appeals roundly rejected the rigid six-point test employed by the United States Department of Labor (DOL) to determine the employment status of interns in *Schumann v. Collier Anesthesia*, a class action involving former students of a master's degree program leading to certification as a registered nurse anesthetists (CRNA) at Wolford College in Florida. The students claimed to be entitled to payment of wages and overtime under the Fair Labor Standards Act (FLSA) as employees for work performed during clinical training hours required as part of their degree program under state law.

In its decision, the Court stated that trying to apply the facts of the 70-year-old case from which the DOL extracted its six-point test to the realities of a modern economy in which intensive internships are required to obtain critical skills, academic degrees and professional certifications was "like trying to eat soup with a fork." In its rejection of the DOL's six-point test, the Court adopted the reasoning applied by the Second Circuit in its decision to reject the DOL's six-point test for employment to unpaid interns in *Glatt v. Fox Searchlight Pictures*. The Eleventh Circuit also agreed with the Second Circuit's finding 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 cited the Second Circuit's non-exhaustive list of factors to be considered in making that determination as an effective tool for evaluating the existence of a bona-fide internship in the context of modern economic and educational settings.

The factors, none of which are considered dispositive, articulated by the Second Circuit and adopted by the Eleventh Circuit 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.

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Client Tip: *Although the DOL continues to scrutinize unpaid internships, the recent decisions of the Eleventh and Second Circuit Courts provide useful direction for internship programs established by colleges and universities.*

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