PULLMAN &COMLEY

Interns' Class Action Carries Multimillion Dollar Price Tag

Working Together

01.08.2015

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Late last spring I posted on this blog about the pitfalls for employers of unpaid internships, often offered to young people during the summer months, or to students or recent college graduates as “pre-entry-level” positions. (See that post here.) With winter closing in (snow is falling as I type), a recent report of a significant settlement brings the issue to our attention again.

Two former “interns” sued Condé Nast Publications on behalf of a class of about 7500 individuals who worked at various Condé Nast magazines and were classified as interns over a period of 6 years or so. They made claims under both the federal Fair Labor Standards Act and under New York law. According to the complaint, one of the named plaintiffs worked in the accessories and fine jewelry department at *W Magazine,* packing, unpacking, sorting and organizing accessories and jewelry, running errands, filling out insurance forms, and “doing other productive work.” The other named plaintiff worked at *The New Yorker,* reviewing submissions, responding to emails, proofreading and editing. Plaintiffs alleged that they may have earned as much as $1.00 per hour.

On November 13, the parties asked the court to approve a proposed settlement of $5.85 million. According to the papers submitted to the court, class members who submit valid and timely claims would recover something between $700 and $1900, depending on various factors. Plaintiffs’ counsel are seeking $650,000 in attorneys’ fees. Condé Nast did not admit liability. The case is *Ballinger v. Advance Magazine Publishers, Inc.,* No. 13-4036 (S.D.N.Y.).

The U.S. Court of Appeals for the Second Circuit currently has before it appeals from two cases raising the question whether interns were properly classified. In *Glatt v. Fox Searchlight Pictures, Inc.,* a judge of the Southern District of New York held that interns who worked on the production of the movie *Black Swan* had performed routine tasks that otherwise would have been done by regular employees, primarily for the employer’s benefit, and were entitled to be paid as employees. In *Wang v. Hearst Corp.,* a different judge of the same court denied summary judgment for the plaintiff intern on the issue of whether he was properly classified, finding that under the six-factor test applied by the U.S. Department of Labor (see this fact sheet) there were material facts in dispute. The judge also denied the plaintiff’s motion for class certification, but then allowed him to take an immediate appeal on that issue It’s not clear whether the Second Circuit will seize one of these opportunities to shed additional light on the “intern or employee” question, or whether it

will focus on issues relating to the propriety of class actions.

Not every employer faces potential liability of the magnitude of Condé Nast, but it's clear that the prudent course, if there is any doubt whether an "intern" satisfies the six-factor Department of Labor test, is to pay at least minimum wage.

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