

It's Almost Summer! Time to Review the Law Governing Interns, Part I

Working Together

06.01.2017

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It's that time of year again when employers who take on interns and volunteers for the summer are reminded that they must comply with federal and state wage and hour laws (see our own blogs on this subject here and here). There have been a few new developments in the law governing unpaid workers over the past few years, so we thought a refresher would be timely.

This is the first of two blogs regarding internships and volunteers. This blog reviews the basic criteria for determining whether a worker can properly be considered as an intern or volunteer. The second installment covers the rights of these unpaid workers under federal and state nondiscrimination laws.

Unpaid Interns

An **intern** typically receives training for his or her own educational benefit. In general, the more an internship program is structured around an academic experience (as opposed to the employer's actual operations), the more likely the arrangement is an internship and not employment. In 2015, the U.S. Court of Appeals for the Second Circuit (whose decisions are binding in Connecticut) established a **new test** for determining whether a worker should be classified as an unpaid intern or as a paid employee. In *Glatt v. Fox Searchlight Pictures, Inc.*, the court rejected guidance published by the U.S. Department of Labor (US DOL) in 2010 that outlined six mandatory criteria that must be met before a worker can be classified as an intern. Instead, the court found that the proper question is whether the intern or the employer is the **primary beneficiary** of the relationship-- if the intern is the primary beneficiary, he or she is not an employee and need not be paid; if however, the employer is the primary beneficiary, the intern is an employee and must receive at least the minimum wage.

The court enumerated **seven non-exhaustive factors** to be considered when identifying the primary beneficiary, namely:

The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.

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The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.

The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.

The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The Second Circuit's seven factors overlap to some degree with the US DOL's six factors, but unlike the US DOL's test, every factor need not point in the same direction, and other relevant evidence can be considered.

The Rules are Different for Volunteers at Not-for-Profit Organizations

A **volunteer** generally refers to an individual who, without anticipation of compensation, performs services for a government agency or a non-profit organization for religious, charitable, civic, or humanitarian purposes. Employees may not volunteer their services to for-profit, private sector employers, but public and not-for-profit employers are generally free to take on unpaid volunteers without violating federal or state minimum wage laws, though they should bear in mind the following:

- Paid employees at public sector and non-profit organizations may not volunteer additional time, without compensation, to do the same work for which they are employed.
- Volunteers who receive remuneration in the form of health insurance, tuition reimbursement, pension or other benefits may be considered employees, even if they do not earn wages or a salary.

Proper classification of interns and volunteers is important because the penalties for misclassifying true employees as unpaid interns or volunteers can be significant-- Connecticut employers, for example, may be liable for **twice the owed wages, plus costs and reasonable attorneys' fees.**

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