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LABOR & EMPLOYMENT LAW ALERT

Second Circuit Ruling Provides Employers with Greater Leeway to Use Unpaid Internships

The United States Court of Appeals for the Second Circuit recently adopted a “primary beneficiary” test to determine whether interns must be treated as employees under federal and state wage and hour laws, in the case of *Glatt v. Fox Searchlight Pictures, Inc.*, No. 13-CV-4478 (2d Cir. July 2, 2015). Rejecting the United States Department of Labor’s six-factor test as “too rigid” and reversing and remanding a lower court’s ruling in favor of two former movie interns, the Second Circuit found that the proper question is whether the intern or the employer is the “primary beneficiary of the relationship.” The court provided a list of non-exhaustive factors to help answer that question. It also held that the primary beneficiary test requires highly individualized inquiries—a conclusion that erects a large barrier to further class-action lawsuits by unpaid interns.

The relevant factors identified by the Second Circuit are as follows:

- The extent to which the intern and the employer clearly understand that there is no expectation of compensation, without any promise of compensation, express or implied, suggesting that the intern is an employee—and vice versa;
- 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 duration of the internship is limited to the period in which it 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; and

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

Under this “totality of the circumstances” approach adopted by the Second Circuit, no one factor is dispositive, and every factor need not point in the same direction to reach the conclusion that an intern is not an employee.

This decision may have broad ramifications for employers relying on unpaid intern labor. It grants employers some leeway to use unpaid interns, provided that the interns are the primary beneficiaries of the relationship. We recommend that employers who use unpaid interns analyze each relationship by applying the factors to make sure that the unpaid interns are not actually employees. In that case, they would be entitled to minimum wage and overtime pay protections under the Fair Labor Standards Act and New York Labor Law.

Please do not hesitate to contact one of our Firm’s employment law attorneys identified below if you would like more information on this issue.

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