Labor and Employment Alert

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New York Federal Judge Rules Unpaid Interns Should Have Been Paid By Fox

Last week, a federal district judge in New York ruled as a matter of law that individuals working on the production of the films *Black Swan* and *500 Days of Summer* for Fox Searchlight Pictures were improperly classified as unpaid interns and were instead "employees," covered by the protections of the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). The case is *Glatt v. Fox Searchlight Pictures, et ano.,* Case No. 11-cv-06784, Southern District of New York (Judge William H. Pauley III).

The district court ruled that the interns—whose primary duties in the production office included answering phones, making copies, filing, drafting cover letters, and running errands—performed "routine" and "menial" tasks that would have otherwise been performed by regular employees.

According to the court, the benefits these interns may have received, "such as knowledge of how a production or accounting office functions or references for future jobs" were "the results of simply having worked as any other employee works, not of internships designed to be uniquely educational to the interns and of little utility to the employer."

By applying a six-factor test articulated by the U.S. Department of Labor—instead of the "primary beneficiary" test (which considers whether the internship's benefits to the intern outweigh the benefits to the engaging entity) adopted by other courts—the court thus concluded that the plaintiffs did not fall within the narrow "trainee" exception to the FLSA's and the NYLL's broad coverage. The court further ruled that it was irrelevant that these interns knew they would not be paid going into their jobs because the FLSA and the NYLL do not permit employees to waive their protections.

The court also denied summary judgment to Fox Searchlight, which had asserted that it was not liable because the interns had been hired by the production company to work on the films. The court rejected this argument and concluded, after analyzing the production-distribution-finance agreement between the production company and Fox Searchlight, that Fox Searchlight's ability to monitor and exercise control over the production employees (including its power to hire key production staff and discretion to fire any person on the production) rendered it a joint employer.

In addition to these rulings as to the production intern plaintiffs, the court considered the FLSA and NYLL claims of a plaintiff who worked in an unpaid internship in Fox's New York office and certified a class of unpaid interns who worked in various Fox Entertainment Group divisions at any time during a nearly five-year period.

This decision should caution employers in all industries to seek advice regarding the compliance of any unpaid internship or trainee programs with the FLSA and applicable state law. The stakes in these cases are high. They are likely to be brought as class actions, seeking unpaid wages on behalf of a potentially large number of individuals who worked as unpaid interns during a particular time period, as well as various statutory penalties (such as liquidated damages). Indeed, in the wake of last week's pro-plaintiff ruling, similar class actions have already been filed.

Contact Information

If you have any questions regarding this alert, please contact:

Gregory W. Knopp
gknopp@akingump.com
310.552.6436
Los Angeles - Century City

Katharine J. Galston
kgalston@akingump.com
310.728.3014
Los Angeles - Century City

Richard J. Rabin
rrabin@akingump.com
212.872.1086
New York

