

“BLACK SWAN” RULING FORCES CLOSER LOOK AT UNPAID INTERNS

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Unpaid summer internships are routine for some businesses, especially those in creative fields such as advertising, design, music, publishing and film – all areas that have flourished locally in recent years.

Each year, an estimated 1 million current and recent college students accept unpaid internships under the assumption the experience will lead to a paying job. While unpaid internships can be a win-win for both parties — job seekers earn marketable experience while businesses enjoy the fresh perspectives and extra hands of eager workers — they may also be the genesis of a new wave of employment litigation.

In a recent decision, U.S. District Judge William Pauley III ruled that Fox Searchlight Pictures violated wage and hour laws when it failed to pay two interns who worked on the production of the award-winning film “Black Swan.” The opinion found that the unpaid interns performed basic administrative work like running errands and making copies, and this work provided more value to the company than to the interns. As a result, Pauley ruled that the interns should have been paid.

Judge Pauley’s opinion is considered by some to be a game-changer, and it has already inspired similar lawsuits and caught the attention of human resources departments across the country. The moral of the story: if your company appears to benefit more from the internship than the unpaid worker, you are exposing your company to potential liability.

SWIMMING OUT OF DANGER

If your company has an unpaid-internship program, be sure it meets the following criteria:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer derives no immediate advantage from the activities of the intern and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If an internship does not meet all of the above, the intern needs to be paid at least minimum wage as well as overtime when appropriate. In addition, a true internship should always be offered for a specific, defined, time frame and should never promise future work.

While there is no guaranteed way to avoid litigation, a critical examination of your company's unpaid internship program is necessary if your company continues to offer these positions. Companies especially need to examine who derives the benefit from these positions.

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