



Another Court Adopts "Primary Beneficiary" Internship Analysis

Insights

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We reported in July that the 2nd Circuit U.S. Court of Appeals (with jurisdiction over Connecticut, New York, and Vermont) laid out seven non-exhaustive factors as part of a "primary beneficiary" analysis for evaluating whether unpaid interns are "employees" for purposes of the federal Fair Labor Standards Act. In so doing, the 2nd Circuit refused to follow the test urged by the U.S. Department of Labor.

Just two months later, the 11th Circuit U.S. Court of Appeals (with jurisdiction over Florida, Georgia, and Alabama) has followed suit: It too adopted the 2nd Circuit's approach and rejected USDOL's views as being inappropriate to an assessment of the "modern internship".

"Flexible" Approach Called For

Schumann v. Collier Anesthesia involved claims by 25 former student registered-nurse anesthetists brought under the FLSA for allegedly unpaid minimum wages and overtime. They claimed to be entitled to this compensation for their work performed in connection with a clinical curriculum. The clinical program was required by law before the students could obtain their degrees and be certified and licensed.

After considering the "unique qualities" of modern-day internships, the 11th Circuit embraced the 2nd Circuit's seven, non-exhaustive factors:

- The intern and the employer clearly understand that there is no expectation of compensation;
- The internship provides training that would be similar to that given in an educational environment (including clinical and other hands-on training provided at educational institutions);
- The internship is tied to the intern's formal education program by integrated coursework or academic credit conferred;
- The internship accommodates the intern's academic commitments by corresponding to the academic calendar;
- The internship's duration is limited to the period during which the internship provides beneficial learning to the intern;
- The intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and

- The intern and the employer understand that there is no entitlement to a paid job at the internship's conclusion.

Under this approach, courts must weigh and balance these and any other relevant circumstances, and no single factor answers the question.

But the court also cautioned against an "all-or-nothing determination". It observed that an unpaid intern might be an FLSA "employee" as to some of the activities in which he or she engages, such as if the individual paints an employer's house during the course of a student internship in a medical field.

USDOL's Test Is Unsuitable

The student-plaintiffs argued that USDOL's view should apply, that is, interns are FLSA "employees" unless *all* of six criteria the agency culled from a 1940s-vintage U.S. Supreme Court case are satisfied. The 11th Circuit dismissed this approach as "too rigid", unpersuasive, and outdated.

The 11th Circuit determined that, instead, the 2nd Circuit's balancing test was specifically tailored to account for the unique qualities of a modern-day internship for academic credit and professional certification. The court felt that such an evaluation takes into account that both the intern *and* the employer might receive significant benefits through longer-term, intensive, modern internships.

Because the lower court had applied USDOL's test, the 11th Circuit directed it to reconsider the facts in light of these new principles.

The Bottom Line

While it might be too soon to pronounce a trend in favor of this "primary beneficiary" framework, nevertheless *Schumann* could provide momentum in that direction. This said, only time will tell whether and to what extent other courts agree with the 2nd and 11th Circuits.

Moreover, organizations (even those in the 11th Circuit) should not see *Schumann* as representing a wholesale approval of unpaid internships. For one thing, the 11th Circuit did not decide whether the students were or were not FLSA "employees". Moreover, the court's discussion focused in substantial part upon internships *for academic credit and professional certification*.

In the end, we continue to recommend that employers approach internship programs and similar relationships with care.

Related People





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