



Court "Certifies" Gawker Media Interns' Collective Action

Insights

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After more than a year of litigation (the filing of which we reported at the time), former unpaid Gawker Media interns will be permitted to send notices to other unpaid or allegedly underpaid interns to inform those potential plaintiffs of the lawsuit and of the opportunity to join the proceedings.

The judge did *not* rule that the former interns' claims under the federal Fair Labor Standards Act are valid. Instead, she decided that the evidence presented to date suggests that other potential plaintiffs are "similarly situated" for FLSA collective-action purposes.

Evidence Of Commonality

The court was persuaded by submissions from the plaintiffs intimating that Gawker interns across-the-board:

- Performed work similar to that of paid employees, contributed content to Gawker's publications, moderated sections of its websites, were integral to its operations in other ways, and received primarily on-the-job training;
- Followed Gawker's general policies, were supervised in the same way employees were, and received communications from management both connoting that interns conducted their activities under conditions similar to those of employees and indicating that Gawker might have viewed them in the same way as employees;
- Used the same internal communications systems employees did, were expected to work independently, received no special training or instruction, and in general shared a number of circumstances that were common across all of Gawker's publications and websites.

The court determined that there is enough evidence of a centralized internship program to justify notifying other possible participants in the lawsuit. The door is still open for Gawker to seek to "decertify" the matter as a collective action at a later time if substantial dissimilarities emerge.

The Bottom Line

Again, the court has not said that the former interns' assertions of unlawful conduct are well-founded, or that interns are entitled to recover under the FLSA. Whether, when, and how the case will ultimately be resolved on its merits remains uncertain.

But it does appear that the distraction, diversion of resources, and business disruption arising from the lawsuit are likely to increase for Gawker in light of the judge's ruling.