



Still Willing To Have Unpaid Interns? (Updated 06 25 13)

Insights

6.12.13

We have repeatedly cautioned that employers who are prepared to take on unpaid interns should enter into these arrangements with their eyes fully open. New developments emphasize this yet again.

The Fox Searchlight Litigation

We reported in March 2012 that Fox Searchlight Pictures had been sued under the federal Fair Labor Standards Act and New York law by unpaid interns who were claiming to be due wages and other sums. The court has now ruled ([link to decision below](#)) that at least two of these individuals were indeed "employees" for purposes of the FLSA and state law.

The judge concluded among other things that these interns:

- ◇ Received nothing approximating the education they would receive in an academic setting or in a vocational school;
- ◇ Received no benefits from the relationship other than those that were "incidental to working in the office like any other employee and were not the result of internships intentionally structured to benefit them"; and
- ◇ Performed "essential" unpaid work that would otherwise have been done by paid employees.

Furthermore, the court was not swayed by the facts that:

- ◇ The interns were not, and did not think themselves to be, entitled to a job at the conclusion of their internships; and
- ◇ The interns understood that they would not be paid for their activities.

It is noteworthy that the judge reached his decision in granting the interns' summary-judgment motion. Essentially, he was saying that the answer is so clear as to leave no need for a jury trial.

And Yet Another High-Profile Lawsuit

Moreover, a former unpaid intern has now filed a federal-court lawsuit ([link to copy below](#)) against prominent fashion designer Norma Kamali and her companies. The former intern alleges violations of both the FLSA and New York law.

of both the FLSA and New York law.

One of the assertions is that her circumstances were "part of a broader trend where formerly entry level employees are being misclassified as unpaid 'interns' or 'apprentices' in an effort by employers to avoid paying [the required] wages . . ." The intern asks for an unspecified award of minimum wages, overtime compensation, and other sums.

The Bottom Line

It has been clear for some time now that a new "hot issue" in wage-hour law is the employment status of unpaid interns. The *Fox Searchlight* ruling is likely to spur even more claims of this kind.

One must wonder how much longer those who have been willing to provide unpaid internships will continue to do so in this environment. We suspect that educational institutions, students, and others seeking these opportunities will find few of them available by next summer, if not before then.

[Glatt v. Fox Searchlight Order.pdf \(1.74 mb\)](#)

[Van Rabenswaay v. Kamali.pdf \(7.42 mb\)](#)

UPDATED 06 20 13: And the beat goes on . . . Unpaid or allegedly underpaid interns have now sued Warner Music and the publisher of *Condé Nast* magazine (links to copies of complaints below). The assertions are typical by now. For example, the *Condé Nast* complaint claims that the publisher "relies upon a steady stream of interns to perform entry-level work that contributes to its magazines' operations and reduces its labor costs."

[Henry v. Warner Music.pdf \(70.27 kb\)](#)

[Ballinger v. Advance Magazine Publishers.pdf \(767.31 kb\)](#)

UPDATED 06 25 13: Yet another lawsuit has been filed (link to copy of complaint below), this time against Gawker Media, which describes itself as a web publisher known for the "inimitable delivery of news, scandal, and entertainment . . ." Also named as an individual defendant is Gawker's founder, Nick Denton. The plaintiffs attack what they allege to have been "Gawker's policies and practices of refusing to pay wages to its workers by designating them as 'interns,' even though they are performing vital work that inures to the benefit of Gawker's various business enterprises." They claim that Gawker "employs numerous other 'interns' in the same way, paying them nothing or underpaying them and utilizing their services to publish its content on the internet, an enterprise that generates significant amounts of revenue for Gawker."

The continuing, widespread publicity about these kinds of lawsuits will probably spur others, particularly after the current internship season comes to a close. There has been some commentary to the effect that only those who "exploit" interns need be concerned. But this is an area in which the parameters of what will be found to have been lawful versus what will be found to have been unlawful are far from clear or explicit. It is entirely possible, and perhaps even likely, that a number

of thoroughly-well-intended internship providers will find themselves embroiled in litigation about the difference between "exploitation" and a valuable educational experience.

[Mark v. Gawker Media LLC.pdf \(177.03 kb\)](#)