

PUBLICATION

More Rulings Coming on Legality of Intern Programs

December 12, 2013

In recent years, a wave of lawsuits brought by unpaid interns seeking compensation for their work has spurred businesses to take a hard look at their internship programs to ensure they are compliant with federal and state wage and hour laws. Some large employers, such as publishing company Conde Nast, have already made the decision to eliminate their intern programs altogether in the face of such suits. However, the question of whether an intern is in fact an employee – and thus entitled to minimum wage and overtime – has not been an easy one to answer. Courts have applied both a six-factor test promulgated by the Department of Labor, as well as a more general test that asks simply whether the internship program benefits the employer or the intern, in resolving this question. Because courts have not approached the issue in a consistent manner, the law remains unclear.

However, that may soon be changing. On November 27, 2013, the Second Circuit Court of Appeals granted petitions for interlocutory appeal in two intern cases. By doing so, the Second Circuit will likely be the first Court of Appeals since the recent wave of suits began to consider how these cases should be evaluated. The cases are *Glatt v. Fox Searchlight Pictures, Inc.* and *Wang v. The Hearst Corp.* The *Fox* case involves two unpaid interns who worked on the film set of "Black Swan." U.S. District Judge William Pauley held that the interns, who allegedly ran errands, photocopied documents and made coffee, among other menial tasks, should have been classified as employees under the FLSA. Judge Pauley also certified under state law a class of interns who worked in five Fox Entertainment Group units in New York, and granted conditional certification to a national class of interns from the five units under the FLSA. In *Hearst*, U.S. District Judge Harold Baer denied certification of a class of former Hearst interns who sought to bring claims under state wage law. The Court of Appeals will hear both cases together.

While the Court of Appeals' decision will be controlling authority only within the Second Circuit, given the general dearth of guidance available on the issue the resulting opinions will likely be considered by courts facing similar suits across the United States in coming years. As such, employers should pay close attention to these cases in making future decisions about their intern programs.