



The "Unpaid" Internship- It Could Cost More Than You Think

After seeing Vince Vaughn and Owen Wilson's new comedy "The Internship", employers should also take note of a [June 11 Federal district court ruling](#), which found that two unpaid interns at Fox Searchlight Pictures working on the set of "The Black Swan" should have been classified as paid employees. In reaching his decision, Judge William W. Pauley III applied the six criteria for unpaid internships included in the Fair Labor Standards Act ([FLSA](#)). They are:

1. Is the internship "similar to training which would be given an educational environment"?
2. Is the internship for the intern's benefit?
3. Does the intern displace paid employees?
4. Does the employer gain an "immediate advantage" from the intern's work (i.e. the intern does work that otherwise would require hiring more paid employees or paying existing staff for additional time)?
5. Is the intern entitled to a job after the internship ends?
6. Do the employer and intern both understand that the intern is not going to be paid for the duration of the internship?

The court also analyzed other factors such as whether (a) the company controlled work schedules and conditions; (b) work done by the interns was "integral" to the company's process of production; (c) the company kept employment records for interns; (d) the company determined the rate and method of payment (if any); and (e) whether the company could hire and fire the interns.

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer's actual operations, the more likely the internship will be viewed as an extension of the individual's educational experience (this often occurs where a college or university exercises oversight over the internship program and provides educational credit). The more an internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer's operation, the more likely the intern would be viewed as receiving educational training.

Ending up on the losing side of a wage and hour claim can cost an employer up to double the amount of wages (including overtime) that should have been paid, plus additional penalties under Federal and State law, attorneys fees (the employer's and the intern's) and employee benefits.

As a result of the ruling, an employer that has an internship program should consider consulting with its advisors to review the structure of its program and determine if its interns should be paid.

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