

# NY Court: Unpaid Interns Entitled to Protections of Labor Laws

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Production interns on the set of a blockbuster movie claimed that they should have been classified as employees, not unpaid interns, and filed suit against the production company. The interns did basic tasks such as answering phones, arranged travel, took lunch orders, and general office work. They claimed that the production company violated federal and New York state minimum wage laws by not paying them for their work. The interns ultimately moved for summary judgment on the issue of whether they were employees covered under the Fair Labor Standards Act and New York Labor Law, and also sought class certification. The company also filed a motion for summary judgment and opposed the request for class certification.

The federal district court judge agreed with both, in part. As to the issue of employment or joint employment between the company that retained the interns and the production company, the court looked at the Formal Control Test, and found that the production company had hiring and firing power; supervised or controlled work schedules or conditions; determined the rate and method of payment; and maintained employment records. In terms of the Functional Control Test, the court found that the interns did not use the production company's premises and equipment; their work was not part of an "integrated production unit;" that the production company closely monitored work on the production and exercised effective control over it; and that the interns worked exclusively on this single production.

Upon review of the totality of the circumstances, the factors weighed in favor of finding that the production company was a joint employer, and thus, this was sufficient to determine that the production company was the interns' employer.

The court next considered whether the interns were covered by the FLSA and NYLL. In doing so, the court looked to the criteria set forth by the Department of Labor regarding unpaid internships.

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;

3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

The court noted that no single factor is controlling, and the circumstances must be considered in rendering the determination. Upon reviewing the various criteria, the court concluded that the interns were improperly classified as unpaid interns, and should have been treated as employees, entitled to the benefits of the FLSA and NYLL. They worked as paid employees work; provided an immediate advantage to their employer; and performed low-level tasks that required no specialized training. The benefits they received in exchange are those that anyone would obtain from working, and are not specialized or uniquely educational to the interns.

Ultimately, the court granted the interns' motion for summary judgment in part, as to the issue of whether they were "employees" covered by the FLSA and NYLL. The motion for class certification of the NYLL claims was granted, as was conditional certification of the FLSA collective action.

Employers utilizing unpaid interns should take caution. This case has serious ramifications, not only for employers in New York, but employers throughout the country. Companies with unpaid interns should consult with counsel to ensure compliance with state and federal employment laws in order to evaluate and manage risk so as to avoid ending up on the wrong side of a certified class action lawsuit.

For more information read about *Glatt v. Fox Searchlight Pictures, Inc.* No. 11 Civ. 6784 (WHP) (S.D.N.Y., June 11, 2013).

## Topics

Wage And Hour, New York, Class Action, Internships