ARE UNPAID INTERNSHIPS BECOMING A THING OF THE PAST?

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Employers in Nevada and every state have historically used unpaid interns for a variety of reasons, it being taken for granted that the research, filing and coffee-schlepping were necessary steps to career growth. Now, as 2014 gets underway, a series of closely-watched lawsuits may mean that the army of interns may not be back next summer—or at least not in the same capacity.

It all started in 2011 when Eric Glatt and Alexander Footman brought a class action against Fox Searchlight Pictures Inc. and Fox Entertainment Group, Inc. (collectively "Fox"). The two had worked as unpaid interns on production of the film Black Swan in New York. Their lawsuit contended that Fox violated labor laws by classifying them as unpaid interns instead of paid employees.

A Department of Labor fact sheet helped the court evaluate whether interns at for-profit businesses fall within an exception to the employer-employee relationship. The fact sheet lays out six criteria for determining when an internship may lawfully be unpaid:

1. The internship is similar to training that would be given in an educational environment (and not merely on-the-job training that employees receive).
2. The internship experience is for the intern's benefit.
3. The intern does not displace regular employees (but is closely supervised by existing staff).
4. The employer derives no immediate advantage from the intern (and on occasion the intern may actually impede operations).
5. The intern is not necessarily entitled to a job following the internship.

The employer and the intern understand that the intern is not entitled to wages during the internship.

In June 2013, the court found that Fox received the benefits of the plaintiffs' unpaid work, which consisted of largely routine tasks and would otherwise have required paid employees. While there was no evidence plaintiffs were entitled to jobs at the end of their internships, and plaintiffs understood they would not be paid, the court found that plaintiffs were still improperly classified as unpaid interns and instead were "employees." The benefits plaintiffs may have received—such as knowledge of how a production office functions or references for future jobs—were the results of simply having worked as any other employee works, not of internships designed to be uniquely educational and of little utility to the employer.

In the wake of the Glatt case, which is now on appeal, Hearst Corp., Donna Karan, NBC Universal, Inc., Warner Music Group Corp., Conde Nast and Gawker Media LLC have been sued in very similar cases. After the lawsuit was filed against it, publishing giant Conde Nast announced it was ending its internship program.

These lawsuits may mirror a larger societal shift in the acceptability of using unpaid interns. Recently, Sheryl Sandberg drew criticism for posting unpaid internship positions for her not-for-profit foundation, LeanIn.Org. (Although in fairness, the criticism may be exacerbated by her wealth and the foundation's aim.)

The exposure to employers for using unpaid interns can prove quite costly: unpaid wages and overtime can be recovered for a period of two years (three years in the case of a willful violation), and a court may double the amount owed, as liquidated damages.

What then are employers to do? In the short-term, employers should analyze their intern hiring practices in light of the six criteria listed above to determine whether an internship can remain unpaid. In the near future, employers should consider proactively implementing written policies shaping unpaid internship programs to ensure compliance with those criteria. From a non-legal perspective, employers may also wish to more fully weigh the economic and publicity pros and cons of using unpaid interns.

While it is too soon to tell what the Glatt case and others might mean for local businesses and their own internships programs, come next summer there may be a few more executives schlepping their own coffee.