

## Lawsuits Challenging Status of Interns on the Rise

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The prospect of hiring volunteer interns is alluring. But many employers are learning the hard way that interns cannot be employed as volunteers, except in narrow circumstances. Two recent lawsuits illustrate this trend—and underscore the importance of conferring with counsel before hiring anyone on a volunteer basis.

Both cases involve the entertainment media, which rely heavily on interns, and seek class-action status. In *Wang v. Hearst Corp.*, a former intern for the fashion magazine Harper's Bazaar claims that the publisher failed to pay minimum wage and overtime to numerous interns who worked up to 55 hours per week over a four-month period. Similarly, in *Glatt v. Fox Searchlight Pic-*

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*tures, Inc.*, two interns allege that the defendant unlawfully treated them—and dozens of their peers—as unpaid volunteers for work related to production of the movie “Black Swan.”

In light of these cases, which are in their initial stages, and which may portend a wave of such lawsuits if the plaintiffs are successful, employers should familiarize themselves *now* with this important area of the law.

### Federal Requirements

Under federal law, an internship at a for-profit business cannot be unpaid unless: (1) the internship is similar to training given in an educational environment; (2) the internship experience is for the benefit of the intern; (3) the intern does not displace regular employees and works under close supervision of existing staff; (4) the employer derives no immediate advantage from the activities of the intern, and, on occasion, its operations may actually be impeded; (5) the intern is not 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.

### State Requirements

Some states impose additional requirements. For instance, in Massachusetts, a for-profit employer may need to show that an unpaid internship is part of a formal educational program, such as by being affiliated with a local college or university. If this interpretation of Massachusetts law is upheld against an employer that fails to comply with it, then the employer will be subject to *mandatory* treble damages and required to pay the prevailing plaintiff's attorneys' fees. Thus, employers should be sure to review state, as well as federal, law in considering the feasibility of any proposed internship.

### Recommendations For Employers

Employers interested in pursuing potential internships should: (1) require interns to sign an agreement confirming that no wages will be paid for time spent in the internship and that the intern will not be entitled to employment at the conclusion of the internship; (2) structure the internship to focus on the provision of broadly applicable training to the intern, not on performance of routine tasks by the intern; (3) avoid even the appearance that unpaid interns are being used to displace or to avoid hiring regular employees; (4) establish a formal academic affiliation, if required or advisable under applicable state law; and (5) confer with experienced employment counsel to ensure that the legal implications of the proposed internship are fully understood and addressed.

If you have questions about establishing an unpaid internship, or need assistance with a threatened lawsuit involving these issues, please feel free to contact us.

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