



Michael Kors and Versace Sued by Unpaid Interns

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Earlier this month, approximately 100 former interns filed class action suits in New York state court against Michael Kors and Versace for allegedly classifying them as interns rather than employees.

The plaintiffs alleged in the class action suits that they were tasked with inputting data, assisting with organizing samples, answering phone calls, setting up promotional events, and running personal errands for paid employees without being paid. They also claimed that the employers benefitted significantly from the unpaid interns' labor and that the employers would have had to hire additional employees or require existing employees from working additional hours if the interns did not perform these tasks.

The plaintiffs argued in their complaints that they satisfy the definition of an "employee" under New York Labor Law ("NYLL"), and therefore, the plaintiffs should have been paid the state's minimum wage for their labor. Currently, in New York, there is no well-developed body of case law dealing with wage issues for unpaid interns and it will be interesting to see how these New York State cases turn out. Presumably, a New York State court will review recent federal cases arising in New York where unpaid interns have sued their employers under the federal Fair Labor Standards Act ("FLSA").

For example, in 2011, unpaid interns who worked on a film, *Black Swan*, sued Fox Searchlight in New York federal court. The interns claimed that the employer violated the FLSA and NYLL by failing to pay minimum wages and overtime wages as employees during the tenure of their internships. The court found that the unpaid interns satisfied the definition of "employee" under FLSA and NYLL. In 2012, similar to the "*Black Swan*" case, unpaid interns sued Hearst Corporation in New York federal court. This case was not considered on its merits and could not move forward for failing to meet the class action standard.

These two federal cases led to the U.S. Court of Appeals for the Second Circuit ("Second Circuit") issuing its "primary beneficiary" standard to determine whether a person is an employee or an intern. Under the "primary beneficiary" standard, courts should consider, though non-exhaustive, the extent to which,

1. the intern and the employer clearly understand that there is no expectation of compensation;
2. the internship provides training that would be similar to that which would be given in an educational environment;
3. the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit;

4. the internship accommodates the intern's academic commitments by corresponding to the academic calendar;
5. the internship's duration is limited to the period in which the internship provides the intern with beneficial learning;
6. the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and
7. the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

In light of this line of cases, some employers decided to settle unpaid wage lawsuits outside of the courtroom. Viacom settled a lawsuit from their unpaid interns for \$7.2 million in March of this year. NBC Universal also settled a lawsuit for \$6.4 million in April of this year. Most recently, Sirius XM settled a wage lawsuit for 1.2 million in August.

Employers with unpaid internship programs are advised to pay special attention to these state and federal court cases. Employers should revisit their internship program policies and ensure that the policies comply with regulatory guidelines posted by the U.S. Department of Labor and the respective state labor agencies.

If you or your institution has any questions or concerns regarding employment or education-related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

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