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Second Circuit Holds That Hearst Interns Are Not Employees

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Last week, the U.S. Court of Appeals for the Second Circuit issued a decision upholding an order granting summary judgment in favor of Hearst Corporation, publisher of such magazines as *Cosmopolitan, ELLE* and *Harper's BAZAAR,* finding that the plaintiffs were not illegally deprived wages under the FLSA or New York state law as statutory "employees." This is the second decision in this case at the Second Circuit as this case previously reached the Second Circuit, but was then remanded back to the District Court to apply the appeals court's opinion in *Glatt v. Fox Searchlight.* The decision established a seven-factor test to determine whether the employer or the intern was the primary beneficiary, which would then establish if the person was an "employee" or not. District Court Judge J. Paul Oetken decided in August 2016 that most of the factors were in favor of Hearst showing that the individuals were validly unpaid interns and not employees entitled to minimum wages under the FLSA. The Second Circuit ultimately agreed with Judge Oetken and focused on the extent to which the internship provides training that would be similar to what an individual would receive in an educational environment, including the clinical and other hands-on training that academic institutions provide. The court also noted that the internships were generally arranged to fit the academic calendar and required academic credit as a prerequisite. While the interns did perform some work regularly performed by paid employees, the court found that "factor alone was not dispositive." The court also noted that at the outset Hearst made it clear that it was an unpaid internship and that there was no guarantee of employment at the conclusion of the internship. It has been a long and winding road that we have tracked since 2012 regarding the legal odyssey of whether unpaid interns are actually "employees" within the meaning of the FLSA entitled to minimum wages and overtime. The rash of lawsuits started in 2013 and focus primarily on the publishing, music and film-making industries. The lawsuits were commonly filed in New York to take advantage of the state's six-year statute of limitation for wage claims. This newest opinion may give employers a road map for creating a legal unpaid internship program but remember, it is a fact-specific inquiry and there are still inherent risks of collective or class actions under federal of state law, if the internship is administered incorrectly.

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