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Client Alert

NEW YORK FEDERAL COURT HOLDS INTERNS WERE MISCLASSIFIED UNDER FEDERAL, STATE LABOR LAWS

On June 11, 2013, the United States District Court for the Southern District of New York held that Fox Searchlight Pictures and Fox Entertainment Group ("Fox") had improperly failed to pay certain students and others retained by Fox and classified as "unpaid interns", who had provided services and otherwise worked on various movie sets, including for the film "Black Swan."

The Court determined that the interns should have been classified as employees and paid wages, because they "worked as paid employees work, providing an immediate advantage to their employer and performing low-level tasks not requiring specialized training." The Court went on to note that the interns in question "received nothing approximating the education they would receive in an academic setting or vocational school" to qualify under the "trainee" exception under the federal Fair Labor Standard Act (FLSA) or New York Labor Law. The Court also found that there was sufficient "control" exercised over the interns such that Fox was properly deemed an employer under both the FLSA and New York Labor Law, based on the employer's ability to hire and fire and determine work schedules. In a departure from and expansion to prior holdings, the Court also concluded that the mere receipt of college credit for some interns was not dispositive of whether their services for Fox (and, by implication, similar services rendered by "interns" for any other similarly situated employer) permitted such interns to render services without compensation. The Court concluded that, in order for an entity to engage interns on an unpaid basis, it is essential that "the internship's benefits to the intern (in, e.g., educating interns regarding the industry and operations at issue) outweigh the benefits to the engaging entity."

Recently, the Internal Revenue Service and the U.S. Department of Labor, as well as State agencies, have focused heavily on combating employee misclassification. This decision further illustrates that trend. For employers, the decision should serve as a basis to reevaluate the practice of providing any internship on an unpaid basis and to take the steps necessary to confirm that your employees, independent contractors and interns are properly classified.

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If you have any questions concerning the classification of service providers, or any other employment related inquiries, please contact either of the Morrison Cohen partners named below, or your usual Morrison Cohen attorney contact.

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