

ALERT

## Fox Searchlight Ruling Raises the Red Flag on Hiring Unpaid Interns...Again

By Bennett Pine

**A** June 11, 2013, ruling by U.S. District Judge William H. Pauley III (Southern District of New York) against Fox Searchlight Pictures, finding that its production interns should have been properly classified as employees and are entitled to the minimum wage and overtime, once again underscores the risks private sector employers face in hiring unpaid interns. (*Glatt v. Searchlight Pictures, Inc.*, Case No. 1:11 CV 06784).

In the long-running *Fox Searchlight* dispute, Pauley ruled that two interns who worked on the film "Black Swan" should have been classified as employees under the Fair Labor Standards Act. He granted the interns' motion for summary judgment, and also certified a class of interns who worked in five New York Fox Entertainment Group units to bring related claims under state law and the Fair Labor Standards Act. The lawsuit alleged that the interns performed menial tasks, such as getting lunch and coffee, running errands and making photocopies for other workers. Such duties, it claims, should have been assigned to regular paid employees at Fox.

The *Fox Searchlight* ruling, and a host of similar cases pending against Warner Music Group/Atlantic Records, the "Charlie Rose Show," designer Norma Kamali, Elite Modeling Agency and others, have focused attention on the risks undertaken by employers that hire interns to obtain "free labor."

At the same time, recent college graduates unable to find paid employment, and college and professional students seeking work experience as a path to future job offers, are increasingly willing to work for free in order to get their foot in the door, making the prospects of an unpaid internship mutually attractive.

As we have previously cautioned, employers must be attuned to the federal laws governing internship as a means of avoiding potential liability.

The U.S. Department of Labor has identified six qualifying criteria to determine whether an unpaid internship program passes muster under the Fair Labor Standards Act. A program qualifies if:

ANDERSON KILL & OLICK, P.C.  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 278-1000 Fax: (212) 278-1733

ANDERSON KILL, CALIFORNIA, LLP  
864 East Santa Clara Street  
Ventura, CA 93001  
(805) 288-1300 Fax: (805) 288-1301

ANDERSON KILL & OLICK, P.C.  
1055 Washington Boulevard, Suite 510  
Stamford, CT 06901  
(203) 388-7950 Fax: (203) 388-0750

ANDERSON KILL & OLICK, L.L.P.  
1717 Pennsylvania Avenue, Suite 200  
Washington, DC 20006  
(202) 416-6500 Fax: (202) 416-6555

ANDERSON KILL & OLICK, P.C.  
One Gateway Center, Suite 1510  
Newark, NJ 07102  
(973) 642-5858 Fax: (973) 621-6361

ANDERSON KILL & OLICK, P.C.  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103  
(267) 216-2700 Fax: (215) 568-4573

ANDERSON KILL & OLICK, P.C.  
110 Main Street, Suite 4E  
Burlington, VT 05401  
(802) 399-2906 Fax: (212) 278-1733

[www.andersonkill.com](http://www.andersonkill.com)





## who's who

**Bennett Pine** is a shareholder in Anderson Kill's New York and

Newark offices and is chair of the firm's employment & labor group. Mr. Pine has broad-based labor and employment law experience and regularly plays a hands-on role offering preventative maintenance advice and counseling to employers in the full range of legal issues affecting the workplace.

**bpine@andersonkill.com**  
**(212) 278-1288 | (973) 642-5006**

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- the internship, even though it contains actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
- the internship experience is primarily for the benefit of the intern;
- the intern does not displace regular employees and works under close supervision of existing staff;
- the employer derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
- the intern is not necessarily entitled to a job at the conclusion of the internship; and
- the employer and the intern understand that the intern is not entitled to wages.

Including an instructional or classroom training aspect in the internship program or having the intern qualify for academic credit are generally regarded as essential components of any unpaid internship program, and may assist employers in establishing the program's educational focus and legitimacy.

An employer — even well intentioned — may unwittingly assume a potential liability in terms of wages, overtime and benefits by engaging unpaid interns unless steps are taken to ensure compliance with Labor Department regulations. ▲

***Practice Hint:** Paying interns the minimum wage, and severely restricting overtime, can help ensure legal compliance, while capping employer investment.*

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