

When are Unpaid Interns Considered Employees?

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The medical and dental industries routinely utilize the services of unpaid interns. These arrangements provide interns with valuable work experience while supplying medical and dental professionals with much-needed assistance. In recent years, however, a number of unpaid interns have filed lawsuits in order to be granted “employee” status—a status that, if granted, would entitle them to numerous benefits. Given the prevalence of unpaid interns in the medical and dental industries, professionals in these fields have long sought clear guidance on this issue in order to remain compliant with state and federal labor laws. Fortunately, a recent Ninth Circuit Court of Appeals decision provided doctors, dentists, and other professionals in California with clarity on the topic of how to distinguish unpaid interns from employees.

Pre-Benjamin

Prior to the aforementioned Ninth Circuit Court of Appeals decision, the U.S. Department of Labor Wage and Hour Division issued guidelines in 2010 that laid out a test to be used when distinguishing an unpaid intern from an employee. Under these guidelines, which several courts later rejected as too rigid, an individual was deemed an employee unless the following factors were met:

- 1) The internship was similar to training which would be given in an educational environment;
- 2) The internship experience was for the benefit of the intern;
- 3) The intern did not displace regular employees;
- 4) The employer that provided the training derived no immediate advantage from the activities of the intern;
- 5) The intern was not necessarily entitled to a job at the conclusion of the internship; and
- 6) The employer and the intern understood that the intern was not entitled to wages for the time spent in the internship.

The Benjamin Decision

Recently, however, in the case of *Benjamin v. B&H Education, Inc.*, the Ninth Circuit Court of Appeals rejected the above test, instead opting to base the employee determination on the identity of the primary beneficiary of the relationship. In *Benjamin*, students enrolled in Marinello Schools of Beauty believed that the services they provided to members of the public as part of the Marinello curriculum qualified them for employee status. The students, who performed these services at Marinello-owned salons in order to gain technical experience and academic credit, alleged that the services performed entitled them to employee status, thereby qualifying them for benefits such as minimum wage, overtime payments, premium wages, and legal standing to file civil causes of action for employer violations of state and federal labor laws.

In reaching its decision, the Court held that the test of whether one qualifies as an employee involves economic reality and does not turn on isolated factors such as those outlined by the U.S. Department of Labor Wage and Hour Division. The Court noted that the Second, Sixth, and Eleventh Circuit Courts of Appeal had also rejected the previous test, instead evaluating the totality of the circumstances in each case and determining whether the employer or the student was the primary beneficiary of the relationship. In evaluating the totality of the circumstances, the court identified the following seven factors to be considered:

- 1) The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa;
- 2) The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions;
- 3) The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit;
- 4) The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar;
- 5) The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning;
- 6) The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and
- 7) The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

In applying the above factors to the case at hand, the court reached the following conclusions:

- The students received hands-on training and academic credit;
- The students did not participate in the program any longer than was necessary to complete the hours required for licensing;
- The students did not routinely displace paid employees; and
- The students had no expectation of employment with Marinello upon graduation.

Based upon these conclusions, the Court held that the students were not employees but were, in fact, unpaid interns.

The Effect of *Benjamin* on Medical and Dental Professionals

As noted above, unpaid internships are common in the medical and dental industries. Therefore, professionals in these fields should utilize the guidelines laid out in *Benjamin* when planning and implementing such programs. In addition, it's highly recommended that employers in the medical and dental industries regularly consult with experienced and knowledgeable legal counsel to ensure that their internship programs remain compliant with all state and federal labor laws.

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