

Business

Sleeping-Giant Issue of Unpaid U.S. Interns Gets Scrutiny

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By the time Ladan Nowrasteh got her masters degree in journalism, her resume was stacked with experience. Her bank account wasn't nearly as full.

Like many students trying to get a leg up, Nowrasteh, 26, of Falls Church, Virginia, worked a string of unpaid internships while in undergraduate and graduate school. She often had to work part-time jobs simultaneously to pay for things like food and rent.

“The value I was getting was non-monetary,” Nowrasteh, who did seven unpaid internships as a student, said in an interview. “I wouldn't have gotten all that experience if I wasn't willing to work for free.”

The practice, especially common in competitive industries like journalism, finance and filmmaking, could change if the appeals court upholds the ruling of a federal judge in New York who found that moviemaker Fox Searchlight Pictures Inc. violated labor laws by not paying two of its interns. Cases have also been brought against Hearst Corp., Conde Nast Publications and the Public Broadcasting Service's Charlie Rose Show.

“This question of whether private-sector internships violate the minimum wage laws has been sort of a sleeping-giant issue for many years,” said David Yamada, director of the New Workplace Institute at Suffolk University Law School in Boston. “The absence of payment is done with a wink and a nod. Interns know they better not make any trouble about this.”

Half Unpaid

According to a survey by the National Association of Colleges and Employers, a Bethlehem, Pennsylvania-based recruiting and research group, more than 63 percent of graduating seniors in 2013 either had an internship or a co-op, a position more closely tied to an educational curriculum. About 48 percent of those were unpaid, according to the survey.

To critics, unpaid internships are an abuse of the labor system, a way for employers to take advantage of desperate job seekers. Supporters, including some former unpaid interns, see it as a way to get training and career contacts.

Nowrasteh said it paid off for her in the end. Three months after she graduated from American University, she had a job doing social media work in the Washington area.

Eric Glatt, 43, wasn't as satisfied. The lead plaintiff in the case against Fox Searchlight, Glatt had left a job at the insurer American International Group Inc. in New York to pursue a career in film. After earning a certificate in film editing, he eventually took two temporary positions on the set of the movie “Black Swan,” where he spent much of his time learning the art of making copies.

Taken Advantage

“I knew I was being taken advantage of,” Glatt, now a law student at Georgetown University in Washington, said in an interview. “I just didn’t think there was anything I could do about it.”

That changed when he read a news article about a six-part test the U.S. Labor Department uses to judge whether unpaid internships violate labor laws.

In ruling against Fox Searchlight, U.S. District Judge William H. Pauley in Manhattan said internships can be exempt from minimum wage requirements only if they adhere to all the criteria in the Labor Department test, which is based on a 1947 U.S. Supreme Court decision concerning railroad trainees.

The criteria require that a position be structured for the intern’s benefit and should not displace regular workers. The employer also should not derive immediate advantages from the intern’s activities.

Lunch Orders

Glatt and Alexander Footman, who also worked as an unpaid intern at Fox Searchlight, alleged that they were asked to perform routine errands and other tasks, such as making deliveries, organizing file cabinets, making photocopies and taking lunch orders.

Los Angeles-based Fox Searchlight, a unit of 21st Century Fox, the entertainment group being split off News Corp. in a restructuring, had argued that the internships should be held to a less stringent “primary benefits test,” which would allow a position to be unpaid if the intern received a greater benefit than the employer. The company argued the interns got more benefits than it did.

Fox Searchlight did obtain “an immediate advantage from Glatt and Footman’s work,” Pauley said in his ruling. “Menial as it was, their work was essential. The fact they were beginners is irrelevant.”

“We are very disappointed with the court’s rulings,” Chris Petrikin, a company spokesman, said in an e-mail. “We believe they are erroneous, and will seek to have them reversed by the Second Circuit as quickly as possible.”

Economic Downturn

Most internships in the private sector would not qualify to be unpaid under the stricter test that Pauley upheld, Yamada, of Suffolk University Law School, said.

The number of unpaid internships tends to go up during economic downturns, said Phil Gardner, who directs the Collegiate Employment Research Institute at Michigan State University in East Lansing.

Gardner doubted that Glatt’s legal victory will put a stop to the practice, though it may make employers think twice about not paying interns, he said. That could hurt students, who may face more limited opportunities to gain experience.

“You start at the bottom, and you do what you have to do to get your break,” Gardner said in an interview. “That’s the mindset. It’s really resistant to change.”

Valuable Experience

Angela Huynh said as a student at Syracuse University in New York she took an unpaid marketing internship at a unit of Time Warner Inc.’s Warner Bros. studio, where she ran errands and also sat in on production meetings and

helped put together press events.

“There were definitely times when I felt like, ‘I don’t really need to be going to get coffee this much,’” Huynh said in an interview. Overall, though, she said the experience was valuable. Now 28 with a master’s degree in creative writing from Columbia University in New York, Huynh said some of the people she used to work with are helping her try to find a job in the industry.

“I didn’t feel like I was being taken advantage of,” she said.

In their lawsuit, Glatt and Footman alleged that Fox Searchlight keeps its production costs down by “employing a steady stream of unpaid interns.”

Such staffers “are becoming the modern-day equivalent of entry-level employees, except that employers are not paying them for the many hours they work,” the former interns alleged in their complaint, filed in September 2011.

Favors Wealth

Glatt said one of his motivations for bringing the case is he believes unpaid internships favor students from higher-income households whose parents can afford to cover their expenses or people like him who were starting second careers and had savings to carry them through.

The Labor Department’s internship standards have not always prevailed in disputes over unpaid labor. In April 2011, the U.S. Court of Appeals in Cincinnati, Ohio, affirmed a lower-court’s ruling in finding that the test is “overly rigid” and “a poor method for determining employee status in a training or educational setting.”

The case centered on work requirements at Tennessee Seventh-day Adventist school Laurelbrook Sanitarium and School Inc., which directed its nursing assistant students to perform services for an on-site health care facility.

If Pauley's decision is challenged and later affirmed by the U.S. Court of Appeals in Manhattan, the case might be considered in conflict with the Ohio federal appeals panel, raising the possibility that the issue could end up before the U.S. Supreme Court.

'Legal Uncertainty'

The ruling in the Fox Searchlight case "creates a significant legal uncertainty," said Samuel Estreicher, professor of labor and employment law at New York University. He said he would advise employers not to use unpaid interns in light of the decision.

"I think it's going to discourage internship programs, even where they largely benefit the intern," he said.

Bloomberg News pays all the interns it employs, said Liz Wamai, the company's global head of recruiting.

Outten & Golden LLP, which represents Glatt and Footman, is also handling lawsuits brought by former unpaid interns at News Corp. and Fox Entertainment Group Inc., Hearst Corp., Conde Nast Publications and Rose. The PBS host has settled the case with former interns, said Juno Turner, an attorney with the firm. The Conde Nast and News Corp. cases still pending. Plaintiffs in the Hearst case were dealt a setback in May when U.S. District Judge Harold Baer Jr. in Manhattan declined to uphold the Labor Department test and rejected their request to include other interns in their suit.

Robert Shindell, a vice president at Intern Bridge Inc., a college recruiting and research company based in Austin, Texas, said it wasn't clear what the broader impact of the court cases may be. Most companies can probably afford to pay interns, who would earn about \$3,000 if they were paid the minimum wage over three months.

“Hopefully some of these companies do the moral and just thing and just pay their employees,” Shindell said in an interview.

The case is Eric Glatt et al v. Fox Searchlight Pictures Inc., 1:11-cv-0684, U.S. District Court, Southern District of New York (Manhattan).

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