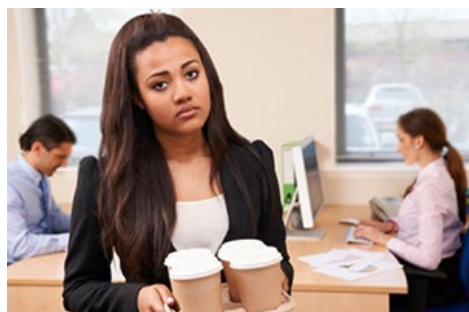


Sirius XM Settles Wage & Hour Class Action With Unpaid Interns

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Earlier this month Sirius XM Radio Inc. settled a wage & hour class action with a class of 1,852 unpaid interns that claimed the company violated federal and state labor laws by failing to compensate them for the work they performed during their internships. The reported settlement amount – \$1.3 million – demonstrates that the class action lawsuits brought by unpaid interns can prove costly for companies that do not properly structure their internship programs.

The plaintiffs in the case, *Tierney v. Sirius XM Radio Inc.*, No. 14-cv-02926 (S.D.N.Y), were “interns” that received no compensation for the hours they worked during their internships. The suit alleged that they were in fact “employees” entitled to minimum wage and overtime compensation. To support this claim, the plaintiffs asserted that they performed tasks necessary to Sirius XM’s operations, such as running errands, placing orders, obtaining breakfast items for Sirius XM employees, and compiling data. Furthermore, the plaintiffs asserted, Sirius XM did not provide them with any academic or vocational training during their internships. The plaintiffs sought compensation for unpaid wages, interest, liquidated damages, attorneys’ fees, and costs under the Fair Labor Standards Act and New York Labor Law.

This settlement comes in the shadow of the guidance provided by the Second Circuit in *Glatt v. Fox Searchlight Pictures, Inc. et al.*, Nos. 13-4478 & 13-4481 (2d Cir. 2015) and *Wang v. Hearst Corp.*, No. 13-4480-cv (2d Cir. 2015). Plaintiffs in those cases were also unpaid interns claiming they worked for many hours during their internships for which they should have been paid. The Second Circuit made it harder to certify a class of interns, holding that the question of intern classification is a “highly specialized inquiry.” Although it may be harder for putative plaintiff interns to bring their claims on a class-wide basis, class certification of interns is still possible under the proper circumstances. Importantly, the Second Circuit provided employers with guidance on how they can design and maintain a legal unpaid internship program: in determining whether or not an “intern” is actually an “employee” subject to minimum wage and overtime laws, the question to be asked is “whether the intern or the employer is the primary beneficiary of the relationship.” While unpaid interns may gain

exposure, contacts, and experience during their internships, the bottom line is that, in order for an unpaid internship program to pass muster, the interns must be educated during the internship.

The Sirius XM settlement should serve as another warning to employers that use unpaid interns, as these positions continue to be in the “eye” of the plaintiffs class action bar. The settlement figure in the Sirius XM case show why these claims are popular. Assuming that the settlement passes the scrutiny of a fairness hearing, the **plaintiffs’ attorneys will collect fees of approximately \$300,000, while the 1,853 class members will be paid an average of slightly less than \$538 each**, paid proportionally based upon the number of “internship sessions” that the person participated in between 2008 and 2015.

What to take away – Remember that Employers who teach their interns and provide them with real training will continue to be able to maintain unpaid internship programs.

On the other hand, if interns are treated as free labor and do not receive any real training or education, they may be found to actually be an employee entitled to minimum wage and overtime compensation.