



## Virginia Workplace Law

### Don't Let Your Internship Turn Into A Black Swan

By: Phyllis Katz. *Wednesday, November 2nd, 2011*

With over two years of recession, jobs have been closed for many, particularly **new college graduates**. Many of these eager graduates are willing to work for nothing "Just to get the experience." Employers want to accommodate friends and neighbors and offer a work experience that will be meaningful on a resume. So a marriage begins, but it will be troubled unless done right.

As **Fox Searchlight Productions learned earlier this month**, as happy as the recent graduates were when working with Natalie Portman on the movie *Black Swan*, as soon as the movie wrapped, the students realized that they may have been wronged by not having been paid a wage. Two of the interns brought a class action lawsuit against the production company for minimum wage and overtime compensation.

The interns claimed that they were employees not interns. Where did the production company go wrong (would not any sensible young person crave to be on the set of a major movie)? It was the activities that were given to the graduates while on the set. One of the graduates worked in accounting, reviewing files, running errands, printing, delivering paperwork and mailing materials. The other graduate performed office assistant type duties such as making copies, preparing expense reports, preparing coffee, taking lunch orders, and taking out the trash.

The problem with the arrangement is that the duties assigned were clearly given not for a training or educational purpose. The beneficiary of the work performed was the production company not the workers.

The U.S. Department of Labor has developed a list of criteria that must be met for a work experience to be unpaid: ***DOL Wage & Hour Division Fact Sheet No. 71 (April 21, 2010.)***

- The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;

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- The internship experience is for the benefit of the intern;
- The intern does not displace regular employees, but works under close supervision of existing staff;
- The employer that provides the training 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 for the time spent in the internship.

Although each factor is important, the experience must be primarily for training purposes and the beneficiary of the experience must be the intern. The *Black Swan* lawsuit brings attention to the issue and every employer should be aware of the potential liability in having interns. Employees may also **file a complaint with the U.S. Department of Labor** instead of filing a lawsuit.

Before you agree to provide an internship opportunity, check with an experienced employment attorney. The **Virginia Workplace Lawyers at Sands Anderson** would be pleased to assist you.

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