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LABOR AND EMPLOYMENT

ALERT

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7TH CIRCUIT SAYS BEAUTY SCHOOL STUDENT NOT AN EMPLOYEE

By Karen Baillie

On August 14, in *Hollins v. Regency Corp.*, the Seventh Circuit Court of Appeals affirmed a decision from the U.S. District Court for the Northern District of Illinois that a cosmetology student who worked at her beauty school's salon was not an employee of the school. Regency Corporation operates for-profit cosmetology schools in 20 states. Regency requires that students complete 1,500 hours of classroom and hands-on work, which they accomplish by working in the school's salon. Customers pay discounted prices. The students are not paid, but receive licensing hours and academic credit.

Venitia Hollins claimed her work at the school salon was compensable under the Fair Labor Standards Act (FLSA). She brought a collective action under the FLSA and a class action under state statutes. The district court granted summary judgment for the school on liability and denied Hollins's motion for conditional class certification as moot.

The court discussed the many tests available to help courts distinguish between employees and unpaid trainees, including the Department of Labor's six-factor test concerning internships, and the multiple factors set forth in the ALI Restatement (Second) of Agency §220. The district court had rejected these tests and instead looked to the Supreme Court's decision in *Walling v. Portland Terminal Co.*, 300 U.S. 148 (1947), for guidance. *Walling* involved unpaid persons who participated in a course of practical training for prospective employment as yard brakemen. The Supreme Court concluded that the *Walling* trainees were not employees, even though they performed useful work that was sometimes identical to that of the regular employees. The Supreme Court's decision in *Walling* is difficult to parse because the Court recognized that "without doubt the Act covers trainees, beginners, apprentices, or learners if they are employed to work for an employer for compensation." The Court found that the railroad employers received "no immediate advantage from any work done by the trainees."

Relying on *Walling,* in *Glatt v. Fox Searchlight, Inc.,* 811 F.3d 528 (2d Cir. 2015), the Court of Appeals for the Second Circuit articulated the "primary benefit test," which asks "whether the intern or the employer is the primary beneficiary of the relationship." This test (1) focuses on what the intern receives in exchange for his work; (2) permits the court to take into account the economic reality of the situation; and (3) reflects the fact that the intern-employer relationship is different than the standard employee-employer relationship.

The Seventh Circuit indicated it approved the "primary benefit" approach, while cautioning that it was not making "a one-size-fits-all decision

about programs that include practical training." Instead, the Seventh Circuit found that the district court properly looked to the "particular relationship and program." For example, the cosmetology program's curriculum, including the time spent on the professional floor serving the public and cleaning up, were mandated requirements for the professional license in cosmetology. Hollins was paying her school tuition "for the opportunity to receive both classroom instruction and supervised practical experience." Regency's main business was education – not beauty salons. Based on these facts, the Seventh Circuit concluded "that the fact that students pay not just for the classroom time but also for the practical-training time is fundamentally inconsistent" with the notion that the students were employees.

This decision adds some much needed clarity to the question of whether students should be paid as employees when they are engaged in traditional student activities on campus. Nonetheless, we expect to see more student claims for wages when their work is off-campus (such as the media interns in *Glatt*) and when work is unrelated to the particular requirements of their degree (such as students who serve as resident advisors or food service employees on campus).◆

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