

The DOL Abandons Rigid Six-Factor Intern Test and Adopts Court-Favored Approach

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On January 5, 2018, the Department of Labor (“DOL”) adopted a more lenient standard for assessing whether interns qualify as employees under the Fair Labor Standards Act (“FLSA”).

Previously, in 2010, the DOL promulgated a more onerous six-factor test. Under that test, an intern was considered an employee unless each of six factors were met. Employers were forced to consider, for example, whether interns displaced any regular employees or whether they derived any “immediate advantage” from the interns’ work.

Now the DOL, in reducing the burden on employers, has aligned itself with several appellate courts and implemented the “primary beneficiary” test. This seven-factor test is derived out of a 2015 ruling by the Second Circuit Court of Appeals in *Glatt v. Fox Searchlight Pictures, Inc.* The test comprehensively analyzes the “economic realities” of an intern’s relationship with his or her employer to determine the “primary beneficiary” of the relationship and is more in line with the current test for determining independent contractor status.

The seven factors of the newly-implemented test are designed for flexibility and the DOL advises that in administering the test, the unique circumstances of each case should be considered. The factors primarily focus on the expectations of the parties, the educational benefits, and the correlations with formal courses of study.

The DOL has stated that it will update its enforcement policies and provide Wage and Hour Division investigators increased flexibility to holistically analyze internships on an *ad hoc* basis. This development is expected to benefit employers and ease employer concerns that interns will be inadvertently misclassified as employees.

If you have any questions on this topic please contact a member of our [Labor & Employment Practice Group](#).

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