

Act One In Unpaid Intern Appeal Has Begun

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Act One has begun in the appeal of the unpaid movie and publishing interns. The scene starts with adversaries finding themselves in the unusual position of playing the role of the appellant at the same time. Cut to a flashback when last year, two New York federal district court judges reached contrary conclusions in the two separate cases that had been filed, with one judge granting and the other denying class certification. Fast forward past the court's granting interlocutory appeals in both cases and then making the decision to hear both appeals together, and on March 28, 2014, appellate briefs were filed at the Second Circuit by one set of unpaid interns as well as one of the companies that hosted them.

At issue in both appeals is whether interns are "employees" under the federal Fair Labor Standards Act (FLSA) and under New York law. If they are found to be "employees," they will be entitled to not only minimum wages but also overtime pay. The contentious nature of this legal issue is exemplified by the fact that in one of the two cases, the judge granted class certification under the state law as well as collective action certification under the FLSA, while in the other case, the judge denied class certification under the state law. As we have previously discussed, in the posts titled, "[2nd Circuit to Decide Unpaid Interns Class Status](#)" and "[Unpaid Interns Strike Back Lawsuits on the Rise Alleging Unpaid Wages](#)," there have been numerous lawsuits brought by unpaid interns suing their former companies for unpaid minimum wages and overtime pay, including the lawsuits currently on appeal by interns who worked on the movie *Black Swan* and interns who worked for the publisher of Harper's *Bazaar*. As the appeal will decide not only New York but also federal law, we, along with companies across the country, are closely watching for Act Two to begin and for the Second Circuit to issue its opinion.

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