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## NBCUniversal's \$6.4M Settlement May Restrain Unpaid Internships

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By Allen Smith 10/31/2014

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Live from New York, it's a settlement of unpaid interns' class action against NBC to the tune of \$6.4 million.

The impact isn't just being felt in the Big Apple or Tinseltown either, but on Main Street, too.

While settlements like this and Fox Searchlight's unsuccessful defense of its unpaid internship program in 2013 ([/Legallssues/FederalResources/Pages/Interns-Black-Swan.aspx](#)) are persuading many employers to pay interns minimum wage, they have led others to either cut back on their internship programs or do away with them entirely.

"This one hits home a little to me—from a higher education lens," said Travis Gregory, SPHR, AVP HR and payroll services at California State University-San Marcos and a member of the Society for Human Resource Management's Labor Relations Special Expertise Panel.

"Internships have long afforded a variety of college students real-world opportunities to validate interest and understanding of specific professions. For generations, internships have helped provide essential insights for both inbound professionals and the organization itself.

Unfortunately, I see decisions like this as a signal to many U.S. employers to close a door that has continuously offered tremendous mutual benefits."

Some companies may not eliminate internships entirely, but cut back on what they ask interns to do if they are unpaid, noted Randy Gepp, an attorney with Taylor English in Atlanta. He still has a student from his alma mater intern for him to see if the student might want to be a lawyer, but said he can't let the intern do certain things, like copy depositions or read through them in current cases without paying that intern. If an intern does compensable work, like one intern who ran a PowerPoint presentation for him, Gepp compensates the intern for that work.

His son recently had an internship in the entertainment industry in California and read scripts, commenting on shows that were in various stages of production. "Some argue he should be compensated, but he didn't want the money," Gepp remarked. Instead his son wanted to "get the skill set."

The law in this area isn't altogether clear, Gepp said, so he wasn't surprised NBCUniversal settled.

### **NBCUniversal Lawsuit**

Jesse Moore, an intern with MSNBC, and Monet Eliastam, an intern with "Saturday Night Live," filed a class action complaint in which they were the named plaintiffs against NBCUniversal Media LLC in July 2013, asserting that the media conglomerate had violated the Fair Labor Standards Act (FLSA) and New York State Labor Law by misclassifying them as unpaid or underpaid interns.

The plaintiffs alleged that NBCUniversal unlawfully denied them unemployment compensation, workers' compensation insurance, Social Security contributions and "most crucially, the right to earn a fair day's wage for a fair day's work.

"Unpaid and underpaid interns are becoming the modern-day equivalent of entry-level employees, except that employers are not paying them or [are] underpaying them for the many hours they work," the complaint stated. "The practice of classifying employees as 'interns' to avoid paying wages runs afoul of federal and state wage and hour laws, which require employers to pay all workers" minimum wage and overtime.

"Employers' failure to compensate interns for all of their work, and the prevalence of the practice nationwide, curtails opportunities for employment, fosters class divisions between those who can afford to work for no wage and those who cannot, and indirectly contributes to rising unemployment," the complaint added.

The plaintiffs noted that internships "are only lawful in the context of an educational training program, when the interns do not perform productive work and the employer derives no benefit." As the Department of Labor has stated in a fact sheet, "If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled to compensation under the FLSA."

### **Interns' Unpaid Duties**

NBCUniversal is “one of the world’s leading media and entertainment companies,” the complaint noted. “It owns and operates a valuable portfolio of news and entertainment television networks, a motion picture company, television production operations, a television stations group, theme parks and a suite of Internet-based businesses. A key part of NBCUniversal’s success are the hundreds of unpaid or underpaid interns who work for it as production assistants, researchers and delivery people, but receive no or very little compensation for their work.”

Moore interned from September 2011 through November 2011 for 24 to 29 hours per week and:

- Booked cars and travel arrangements for correspondents and guests on MSNBC’s morning programs.
- Answered phones.
- Greeted guests, escorted them to hair and makeup, and then to the show’s set.
- Researched segment details and provided that information to guests.
- Provided guests with “dub copies” of the shows on which they appeared.

Moore was paid no wages for his work, and knew other interns who performed productive work and weren’t paid. Although one of the original named plaintiffs, Moore voluntarily withdrew his claims from the action on April 16, 2014, according to the memorandum in support of plaintiffs’ motion for preliminary approval of class settlement notes without specifying why.

Eliastam stuck out the lawsuit until the end. From January 2012 through May 2012 and from September 2012 through December 2012, she interned for “Saturday Night Live” with no pay. As an intern she worked 25 to 27 hours per week and:

- Obtained and completed paperwork for extras and background actors.
- Filed.
- Processed petty cash envelopes.
- Went on errands to get props, food and coffee.
- Did set lockdowns to ensure that no one walked onto the set or made noise to disturb the shoot.
- Otherwise assisted at shoots of skits.

### **Three Subclasses**

The Oct. 22, 2014, settlement memorandum provides for an average payment of approximately \$505 to each unpaid intern. Eliastam will receive \$10,000, and other named plaintiffs will receive \$2,000 to \$5,000.

The class of plaintiffs consists of three subclasses of individuals:

- A New York subclass, consisting of all persons participating in unpaid internships with NBCUniversal in New York at any time since July 3, 2007.

- A California subclass, consisting of all individuals who participated in unpaid internships in California since Feb. 4, 2010.
- A Connecticut subclass, consisting of all individuals who participated in unpaid internships in Connecticut since Feb. 4, 2011.

“For decades, internships have been offered by corporate America to serve a dual purpose: providing students and others new to the industry a welcome opportunity to learn the trade in a real-world working environment, while at the same time defraying the costs of such training by bringing in the individuals as unpaid interns,” said Michael Schmidt, an attorney with Cozen O’Connor in New York City.

“However, a series of lawsuits, like this one, have threatened to turn the world of internships upside down, and place companies at risk of significant liability at a time when the economy still cries out for the valuable experience these internships offer when individuals still have trouble finding good, paying jobs,” he added.

“Unfortunately, given the high costs of these cases, large and small companies are often forced to resolve the claims early, even though they feel strongly about the merits of their defense or the well-intentioned programs they have developed. These lawsuits are not likely to fizzle out any time soon.”

Camille Olson, an attorney at Seyfarth Shaw in Chicago, Los Angeles and San Francisco, said, “The settlement confirms the significant risks that are presented if interns are not treated in compliance with applicable laws. Many companies have revised their programs, and included hourly payments in compliance with applicable minimum wages under state and federal law for all hours the interns work.” But she noted that NBCUniversal did not admit to any liability and “there was no finding of violations of state or federal law.”

Justin Swartz, an attorney at Outten & Golden in New York representing the plaintiffs, did not respond to a request for comment.

NBCUniversal also did not answer a request for comment.

This case is *Eliastam v. NBCUniversal Media*, No.: 1:13-cv-4634 (S.D.N.Y. 2014).

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