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Learner/Trainee or Employee? What is the FLSA Test?

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With summer break quickly approaching, many employers need to determine whether their student "interns" are learners/trainees or employees under the Fair Labor Standards Act (FLSA). If the latter, the wage and overtime requirements of the FLSA apply.

In *Solis v. Laurelbrook Sanitarium and School,* the Secretary of the Department of Labor (DOL) filed suit against Laurelbrook to enjoin further violations of the child labor provisions of the FLSA. Laurelbrook, founded by a group of Seventh-Day Adventists, operates a boarding school for grades nine through 12, an elementary school for the children of its staff and a nursing home (the sanitarium) where the boarding school students obtain practical training.

At issue was whether the students should be paid for their work at the sanitarium. The district court found in favor of Laurelbrook and the Department of Labor appealed. The U.S. Court of Appeals for the Sixth Circuit affirmed, clarifying the proper test in the context of training or learning situations.

The FLSA sets forth the wage requirements for employees under federal law. The court noted that, while the FLSA's definition of employee, employer and employ are "exceedingly broad and generally unhelpful," there are limits to the concept.

For example, "[a]n individual who, 'without promise or expectation of compensation, but solely for his personal purpose or pleasure, work[s] in activities carried on by other persons either for their pleasure or profit,' is outside the sweep of the Act." The court found the DOL's reliance on the economic realities test no more useful than the FLSA's definitions themselves and determined a need to establish a guiding principle.

For example, in distinguishing between independent contractors and employees, the issue is the degree of dependence of the individual on the business. "It is dependence that indicates employee status." A similar inquiry is required to distinguish between the trainee/learner and an employee.

The appellate court rejected Laurelbrook's argument that its status as an accredited vocational school categorically prohibited a finding that the students were employees. The Sixth Circuit also rejected the DOL's argument for the six-factor test set forth in the Wage and Hour Division's Field Operations Handbook, finding it to be "a poor method for determining employee status in a training or educational setting."

The court found the proper focus to be on "which party receives the primary benefit of the work performed" by the students - the students or Laurelbrook. Analysis under the FLSA should also consider the "evils" it is intended to prevent which include "displacement of regular employees and exploitation of labor."

The "primary benefit test" focuses "on the benefits flowing to each party … and captures the distinction the FLSA attempts to make between trainees and employees." Factors to consider include "whether the relationship displaces paid employees and whether there is educational value derived from the relationship…"

In this case, the primary benefit flowed to the students who were closely supervised, learned "practical skills about work, responsibility and the dignity of manual labor in a way consistent with the religious mission of their school." The "hands on training" and educational aspects of the instruction were sound and clearly beneficial to the students. While Laurelbrook received payment for the students' work, the students did not displace regular workers. Rather, their instruction to the students was often at the expense of being productive themselves. And, if Laurelbrook ceased using students, there would be no need to hire additional staff.

The court distinguished the circumstances presented in *Solis* from those in *Marshall v Baptist Hosp,* where the primary benefit flowed to the employer. In that case, the students' training was deficient in many ways, and they were often supervised by other students, if at all. The students were often required to relieve regular employees of their duties, and they were assigned to shifts that were originally assigned to employees. Not only were the students short changed educationally, but the hospital would have had to hire more employees but for the use of students.

As with many wage/hour issues, the determination of whether an individual is an employee or a learner/trainee is factually driven. Employers should remember that it is their burden to establish exceptions under the FLSA and there can be significant liability resulting from violations. When in doubt, seek advice from an attorney who specializes in employment issues.