

Sixth Circuit Clarifies Test for Determining When Students/Trainees are Employees

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On April 28, 2011, the United States Court of Appeals for the Sixth Circuit held that the proper approach for determining whether an employment relationship exists in the context of a training or learning situation is to ascertain which party derives the primary benefit from the relationship. If no employment relationship exists, then the Fair Labor Standards Act (FLSA) and its child labor prohibitions and overtime pay requirements do not apply.

In *Solis v. Laurelbrook Sanitarium and School*, the United States Department of Labor (DOL) filed suit seeking to enjoin the alleged use of child labor by Laurelbrook Sanitarium and School, Inc. (Laurelbrook). Laurelbrook is a non-profit organization that runs a boarding school for grades 9 through 12, an elementary school for children of staff members, and a nursing home. The organization follows the philosophy of the Seventh-Day Adventist Church, including the theory that a child's education should have a practical training component. Pursuant to this, the boarding school students spend half of every day learning practical skills. They are assigned to the school's kitchen and housekeeping departments and older students provide medical care to patients of the nursing home. The students are not paid for the duties they perform.

In determining whether these students are employees and subject to the FLSA, the Court rejected the test created by the DOL that is included in its Field Operations Handbook. The Court also rejected Laurelbrook's suggestion that the FLSA never applies to vocational school students. Instead, the Court ruled that the proper test looks at the "economic realities" and "totality of the circumstances" on a case-by-case basis to determine which party is receiving the primary benefit from the relationship. Multiple factors should be considered, including whether the relationship displaces paid employees and whether there is educational value derived from it.

Applying this test, the Court held that the boarding school students are not employees. While the services performed by the students provide some benefits to the school, such as contributions to its maintenance, operations and licensing requirements, those benefits are offset by the fact that the instructors must spend extra time supervising students at the expense of performing productive work. In addition, the school is sufficiently staffed such that if the students did not perform work, the staff could provide the same services without interruption. The Court found that the students receive a tremendous benefit as a result of this practical training, which results from "sound" instruction. It allows them to be competitive upon graduation, teaches them responsibility and the value of hard work, and provides them with a strong work ethic and leadership skills.

What Does This Mean for Employers?

When determining whether a student or trainee qualifies as an employee under the FLSA, employers must remember to apply the test enunciated by the Sixth Circuit. It is important to look at every factor that may tend to show which party receives the primary benefit from the relationship - which may include consideration of the factors outlined in the DOL's Field Operations Handbook - and to consider the particular circumstances of each relationship on a case-by-case basis.

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