

THURSDAY

FRIDAY

MONDAY

TUESDAY

TODAY

Questions and Comments

Previous

Next

Bookmark Reprints

NEWS

RULINGS

VERDICTS

Wednesday, June 5, 2013

## ABA letter to Labor Department highlights worry over unpaid pro bono internships

*ABA urges government to give law firms a green light on unpaid students*

By Don J. DeBenedictis

Last year, law students at George Washington University came up with a plan to help Iraqi refugees, and the school found a law firm to lead the pro bono project. But at the last minute, the firm backed out.

The firm said it feared that bringing on unpaid interns, even only to do pro bono work, could violate federal wage laws, according to Alan B. Morrison, the George Washington's dean for public interest law.

Business use of unpaid interns, which expanded rapidly as the economy contracted, has drawn increased criticism in the last few years, including high-profile lawsuits against Fox Searchlight Pictures Inc., Harper's Bazaar magazine and public television's Charlie Rose.

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**'The basic problem is the [Department of Labor] is not willing to state a public position on this.' - Alan B. Morrison**

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Now the issue has hit law firms and law schools. In a letter last week, the American Bar Association urged the U.S. Department of Labor to allow students and recent law graduates to participate in law firm pro bono activities without being paid.

ABA President Laurel G. Bellows requested the department's solicitor issue an informal letter to "provide both law firms and law schools assurance that the Department will not take legal enforcement action against intern hosts who utilize unpaid interns under certain circumstances that are consistent with the purposes of [the Fair Labor Standards Act] and do not violate the law."

On Friday, Morrison also wrote Department of Labor Solicitor M. Patricia Smith. He said the possibility that law firms doing pro bono work might draw scrutiny over unpaid interns had become "a major barrier to increasing the availability of pro bono services through the use of law student volunteers."

Law firms refuse to work on law school pro bono projects "all the time" citing that fear, Morrison said.

"Law firms are very cautious entities," he said. "Absent some guidance from the department, [they] don't want to take the risk."

In an emailed statement, a spokesperson for Smith's office said only, "We have received the ABA's letter, and we are taking their request under advisement."

The issue turns on whether law students or recent law school graduates might be

### Law Practice

**ABA letter to Labor Department highlights worry over unpaid pro bono internships**  
The American Bar Association has asked the U.S. Department of Labor to declare law firms safe from wage actions when they use unpaid law students on pro bono projects.

### Judges and Judiciary

**LA deputy public defender pushes state to track data on disabled judges**

The catalyst behind a proposed bill to require the state to ask judicial candidates and judges about disabilities and previous military service isn't a disabled rights advocacy group; rather, it's a Los Angeles deputy public defender.

### Law Practice

**When seeking associates, many firms seek alternative experience**

Recruiting partners at small and midsize law firms agree that credentials matter. But what can often make a difference in whom they recruit into their summer associate programs is alternative experiences outside the classroom.

**Nonprofits, agencies take advantage of flooded market**

There aren't nearly as many summer jobs at big law firms these days as there are law students who want them. The timing couldn't be better for nonprofits and government agencies to take advantage of the flooded legal market.

### Government

**LA City Attorney-Elect Feuer names transition team**

Feuer, who will take office July 1, names more than 40 former officials and judges, attorneys and community leaders to the team.

**U.S. Court of Appeals for the 9th Circuit Amgen workers can pursue class action over failed drug, 9th Circuit rules**

A failed cancer drug that sent biotech giant Amgen Inc.'s stock plummeting also wrecked employee pension plans, giving workers the right to pursue a class action against the company, a 9th U.S. Circuit Court of Appeals panel held Tuesday.

### Judges and Judiciary

**Budget committee OKs interpreter pilot program**

exempt from the federal labor act's general requirement that employees be paid. The act sets out six required criteria for determining whether a worker is a "trainee" who does not count as a paid employee. The criteria include that the training is similar to what the student would get in school, that no regular employees are displaced and that the employer gains "no immediate advantage" from the trainee's work "and on occasion, its operations may actually be impeded."

The ABA and Morrison are essentially seeking an alternate exception for students working on public interest projects. Those situations go beyond the interests of employer and employee, the George Washington dean said in his letter, to include the interests of people who can't afford essential legal services.

The issue is particularly important, he added, now that New York now has required new lawyers to have done 50 hours of pro bono work in order to be admitted. California, New Jersey and Montana may soon do the same.

In an interview, Morrison acknowledged that realistically no law student would be likely to sue the firm where he or she did unpaid pro bono work. The Department of Labor probably would not either, he said.

But he can't be sure. "The basic problem is the department is not willing to state a public position on this," Morrison said.

Some employment lawyers do think law firms or corporate law departments could be at risk under the act even for pro bono projects.

"It's an interesting question," said Manhattan attorney Jesse Strauss, who has sued more than a dozen law schools over allegedly misleading graduate job data. Last week, Strauss and lawyers at a group called Intern Justice sued fashion designer Norma Kamali on behalf of an unpaid intern.

"I would argue that the law firms do need to pay because they're getting an advantage," Strauss said. "Their regular associates can be on paid work."

Pasadena attorney Antonio de Cardenas, who represents employers, cautioned that law firms also might be liable under California's somewhat more stringent wage-and-hour rules.

"Quite honestly, this gives me pause," his colleague Anne E. Garrett said about law firm interns. "I think there's significant risk."

But some pro bono coordinators and career services officials at California law schools regard the issue as a tempest in a teapot.

"I'm a little surprised by this [ABA] letter," said Anna S. Davis, the director of public interest programs at UCI School of Law.

Early in 2010, soon after the Irvine school opened, Davis was setting up a pro bono project to help special-needs children in foster care. The law firm she was working with expressed concern about the federal wage laws.

But after researching the issue with the school librarians' help, she convinced the firm there was no risk because the students would meet the labor act's trainee criteria.

Davis said no private employer has raised the issue since, although she often tells them of her research.

Officials at several other California schools said they effectively avoid any problem by not placing student interns with private employers or by insisting that students either get paid or receive academic credit.

ABA law school accreditation rules state that students in externship programs cannot be paid if they are receiving class credit.

H. Catherine Mayorkas, UCLA's director of public interest programs, acknowledged that law firms and schools are concerned about the issue. "Depending on what the Department of Labor does, it has all sorts of implications," she said.

A budget conference committee voted Monday to fund a pilot program to provide court interpreters for civil cases in three counties. A Justice Department investigation could expand services further, though many are worried about costs.

### **Intellectual Property** **ITC bars import of older Apple cellphones, tablets**

The International Trade Commission has issued a limited exclusion order against Apple Inc. products that were found to have infringed a Wi-Fi patent owned by Samsung Electronics Co. Ltd.

### **Environmental** **Judge backs water deal for Southern California cities**

A Sacramento County judge on Tuesday upheld the validity of a hard-fought deal over how to divvy up shrinking Colorado River water supplies for Southern California.

### **California Supreme Court** **Why pray before a town hall meeting?**

The Supreme Court would in all likelihood not grant review unless it intended to reconsider the entire question of religious invocations. By **Charles S. Doskow**

### **Government** **Perks at the fingertips of legislators**

Each of the 535 members of Congress earns at least \$174,000 a year. These salaries are alarming as the median household income in the US fell 1.5 percent to \$50,074 in 2011. By **Jeffrey A. Lowe**

### **Entertainment & Sports** **Spotlight swings back to morals clauses after golfer's public comments**

The truth is that for Taylormade and countless other brands, Sergio Garcia's insensitive statement represents the most recent example of indiscretion by a highly compensated spokesperson. By **Jason M. Joyal**

### **Judicial Profile** **John E. Chemeleski**

Superior Court Commissioner Los Angeles County (Long Beach)

### **Law Practice** **Competition fierce as firms keep summer associate programs trim**

Summer associate programs may never again reach their pre-recession sizes. This year, legal observers say most big firms are hiring in considerable numbers but are staying cautious, and standards are rising.

But in Los Angeles, there are enough nonprofit and public interest organizations that UCLA doesn't need to send students to firms or businesses to do pro bono work, she said.

Pro bono officials at Southwestern Law School and Pepperdine University School of Law largely agreed. "We have plenty of connections with nonprofit organizations," said Southwestern's externship director, Anahid Gharakhanian. The school will sometimes place a student to work unpaid at a law firm who is "not actually replacing an employee."

Pepperdine's director of clinical education, Elayne Berg-Wilion, said the Malibu school only recently relaxed its no-private-employer policy. It now occasionally places students with small firms for small pro bono or public interest projects. "We said it would be at their risk to decide" whether to take unpaid interns, she said, referring to the participating firms.

Chapman University School of Law takes a similar at-your-own-risk approach, according to Suzanna Adelizi, the associate director of career services. It does so largely because in Orange County, there are only two public interest groups where students can work on pro bono matters.

The school won't allow law firms that do not pay students to recruit on campus, but it does let them post openings. "I don't want to be paternalistic," she said.

And sometimes, those unpaid jobs pay off. Adelizi said a criminal defense lawyer who brought on a student to work on a victims' assistance project later began to pay her. Once the student, who has now graduated, passes the bar exam, the lawyer intends "to offer her a permanent position with the firm."

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