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The Sixth Circuit Clarifies the FLSA Test for Educational Programs

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A recent Sixth Circuit Court of Appeals opinion, *Eberline v. Douglas J. Holdings* (12/17/2020), clarified how the Fair Labor Standards Act ("FLSA") exemption for educational programs should be applied when some duties do not fall within the educational purpose.

In *Eberline*, cosmetology students of the Douglas J Institute were afforded "a true salon setting" in which to undergo their training, including the opportunity to provide supervised cosmetology services individually and in groups. However, the students were also expected to perform cleaning and janitorial activities (e.g., laundry, restocking shelves, dishes). The cosmetology students, who spent up to four hours per day on such extraneous tasks, argued that they should be paid for their time because the work itself was unrelated to their studies and specifically excluded from the Douglas J Institute curriculum and the state training requirements.

The primary issue before the Sixth Circuit was whether the cosmetology students were employees under the FLSA, which would entitle them to payment for hours worked. The FLSA defines "employee" as "any individual employed by an employer," and "employ" as to suffer or permit to work. Courts utilize an economic reality test to decipher whether the relationship is one of employment, and there is no presumption that students, even students of vocational schools, are automatically excluded from an employee classification.

Finding that the district court erred when it "fashioned a new test to ascertain whether the tasks at issue constitute compensable work," the Sixth Circuit held that the "primary-beneficiary test" is the appropriate test because the cleaning and janitorial activities in question transpired in the "educational context." The primary-beneficiary test asks "whether the employer is taking unfair advantage of the student's need to complete the internship or educational program."

The Parties acknowledged the primary-beneficiary test, but they did not agree on its application to this case. The cosmetology students suggested that the test should only take into consideration the cleaning and janitorial activities, while the Douglas J Institute contended that the entirety of the relationship should be assessed, hoping to establish that the students remained the primary beneficiaries throughout the program as a whole.

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The Sixth Circuit held that: the test "may be applied specifically to a segment of the vocational training"; the analysis ought to consider the overall context in which the segment transpired; and, the Douglas J Institute retains the argument that monies are not owed where the claim for compensation is based upon "activities undertaken for de minimis amounts of time" or for activities that are "too difficult in practice to record." The Sixth Circuit outlined the procedure and then remanded the case to the district court for a final determination.

The lesson of this case is that employers engaged in educational or vocational training, including employers who offer internships, must carefully evaluate the work performed, both altogether and as partitioned, through the lens of the primary-beneficiary test to avoid claims under the FLSA.

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