

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Velarde v. GW GJ, Inc.

914 F.3d 779 (2d Cir. 2019) · Decided February 5, 2019

SUMMARY

The Second Circuit held that the **Glatt** "primary beneficiary" test—previously used for unpaid interns—applies to determine whether students at for-profit vocational schools are "employees" under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL). Applying that test, the court found that a cosmetology student who completed state-mandated training hours in the school's salon was the primary beneficiary of the relationship, and thus not an employee entitled to wages, where the student paid tuition, received supervised hands-on training required for licensure, and did not allege the school's program was deficient or that he replaced paid employees. The decision affirms that vocational schools may require unpaid practical training as part of a state-approved curriculum without triggering compensation obligations under the FLSA or NYLL.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Susan L. Carney
JURISDICTION	Federal
DECIDED	February 5, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the United States District Court granting judgment on the pleadings in favor of defendants.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	Patrick Velarde v. GW GJ, Inc.

TOPICS

[flsa](#) [wage and hour](#) [employment law](#) [civil procedure](#) [standard of review](#)

PRACTICE AREAS

[Employment Law](#) [Education Law](#)

QUESTIONS PRESENTED

1. Whether students at a for-profit vocational school who complete state-mandated training hours as part of their education are 'employees' entitled to minimum wage under FLSA and NYLL; and whether the 'primary beneficiary' test applies to such students.

HOLDINGS

1. The primary beneficiary test applies to vocational school students, and under that test, Velarde was the primary beneficiary of his relationship with the Academy and therefore not an employee under FLSA and NYLL.

KEY QUOTATIONS

“We first conclude that the District Court was correct to analyze whether Velarde was an 'employee' of the Academy by using the 'primary beneficiary' test established in Glatt. Applying that test, we then determine that Velarde was not an employee of the Academy when enrolled there and working in the Salon, because he was the primary beneficiary of his relationship with the Academy, including with respect to his work in the Salon.” (at 783-784)

“1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. ... 7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.” (at 536-537 (in Glatt, quoted in footnote 7))

FACTUAL BACKGROUND

Velarde enrolled in a for-profit cosmetology school to become a licensed cosmetologist in New York. As part of the state-mandated 1000-hour training program, he worked in the school's student salon providing services to the public under supervision, without pay. He paid tuition for the program. After completing the program and obtaining his license, he sued the school for unpaid wages under FLSA and NYLL.

PROCEDURAL HISTORY

Velarde sued the Academy for unpaid wages under FLSA and NYLL. The magistrate judge recommended granting the motion for judgment on the pleadings. The district court adopted the recommendation and entered judgment for the Academy. Velarde appealed.

DISPOSITION

affirmed

CASES CITED

- Glatt v. Fox Searchlight Pictures, Inc., 811 F.3d 528 (2d Cir. 2015)
- Walling v. Portland Terminal Co., 330 U.S. 148 (1947)
- Barfield v. N.Y.C. Health & Hosps. Corp., 537 F.3d 132 (2d Cir. 2008)

- Xuedan Wang v. Hearst Corp., 877 F.3d 69 (2d Cir. 2017)
- Benjamin v. B&H Educ., Inc., 877 F.3d 1139 (9th Cir. 2017)
- Hollins v. Regency Corp., 867 F.3d 830 (7th Cir. 2017)
- Solis v. Laurelbrook Sanitarium & Sch., Inc., 642 F.3d 518 (6th Cir. 2011)
- Marshall v. Baptist Hosp., Inc., 668 F.2d 234 (6th Cir. 1981)
- Mantena v. Johnson, 809 F.3d 721 (2d Cir. 2015)
- L-7 Designs, Inc. v. Old Navy, LLC, 647 F.3d 419 (2d Cir. 2011)
- Brown v. N.Y.C. Dep't of Educ., 755 F.3d 154 (2d Cir. 2014)
- Schumann v. Collier Anesthesia, P.A., 803 F.3d 1199 (11th Cir. 2015)