



## Are Interns Injured on the Job Entitled to Michigan Workers' Compensation Benefits?

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With summer right around the corner, many Michigan employers are staffing up with interns to help out with the workloads, and also as part of recruiting programs. A question that most employers hopefully won't have to grapple with, but inevitably some will, is: What happens if an intern gets injured on the job; is he or she entitled to Michigan workers' compensation benefits?

The answer to this question is not clear-cut. It requires an analysis of Michigan statutes, and a relative dearth of Michigan case law. Ultimately, the answer to the question of whether interns are eligible for Michigan workers' compensation benefits is, like most legal inquiries: It depends. Each situation requires a factual analysis that must be considered in light of statutory language and judicial interpretations. What follows is a framework for considering these issues on a case-by-case basis.

### **The Legal Framework**

The issue of whether an intern who is injured on the job is entitled to Michigan workers' compensation benefits hinges on whether the intern is an "employee" for purposes of the Michigan Workers' Disability Compensation Act (the "Act"). If so, then the injured intern would be entitled to Michigan workers' compensation benefits.

Section 418.161(1) of the Act defines "employee," and the term "intern" is not specifically included in the definition. However, subsection 418.161(1)(m) provides that:

Every person engaged in a federally funded training program or work experience program that mandates the provision of appropriate workers' compensation for participants and that is sponsored by the state, a county, city, township, village, or school district, or an incorporated public board or public commission in the state authorized by law to hold property and to sue or be sued generally, or any consortium thereof, shall be considered, for the

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purposes of this act, to be an employee of the sponsor and entitled to the benefits of this act.

This section is narrow in scope and is only applicable where the intern is part of a federally funded training or work experience program. If the specific statutory criteria are met, then a sponsor—the employer—would be responsible for the provision of workers' compensation and must secure the payment of workers' compensation by a method, such as obtaining an appropriate insurance policy with a carrier or group fund, permitted under Chapter 6 of the Act.

Looking beyond these specific statutory criteria, there is very little Michigan case law that sheds additional light on whether an intern should be considered an employee for workers' compensation purposes. In particular, cases that have explored whether an intern is entitled to Michigan workers' compensation benefits consider whether the intern relationship was one of "mutual benefit." To the extent there is mutual benefit for both parties (intern and purported employer), this establishes the requisite employment relationship necessary to trigger eligibility for workers' compensation benefits.

For example, in an unpublished opinion in the case of *Macarthur v Ramsey Havenwyck*, the Michigan Court of Appeals addressed a situation involving a plaintiff who was injured in the course of her internship with a defendant hospital. Plaintiff did not complete her internship, and did not file a claim for workers' compensation benefits. Nearly three years after the alleged assault, plaintiff filed a civil complaint alleging that the defendant hospital was negligent.

The trial court granted the defendant's motion for summary disposition, holding that the plaintiff was an employee subject to the exclusive remedy provision of the Act. The civil case was therefore dismissed.

The Court of Appeals held that because there had been an exchange of services for training or college credits towards graduation, there was an employment relationship sufficient to establish her entitlement to workers' compensation benefits. The court noted that the plaintiff was required to complete the internship in order to obtain her master's degree in psychology. In return, she provided counseling services. Accordingly, because the internship relationship was one of "mutual benefit," the intern was an employee entitled to benefits.

In the very dated case of *Betts v Ann Arbor Public Schools*, the court analyzed the relationship under the old eight-factor economic reality test. The Michigan Supreme Court held that the required "contract for hire," for purposes of the Act, may be established where there is an exchange of services for training or college credit towards graduation. In this sense, the *Betts* case is similar to the more recent *Macarthur* case in that courts look to whether both parties received some identifiable benefit from the relationship.

## **Conclusion**

Determining whether an intern is entitled to workers' compensation benefits in Michigan requires a fact-specific analysis. Neither statutes nor case law provide clear, easy answers. The legislative and judicial guidance suggests that in situations where an intern and employer engage in a relationship of "mutual benefit," then the intern will be considered an "employee" entitled to benefits under the Act. That said, it is worth noting that none of the cases were decided based on the "20-factor test," adopted by the Michigan



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legislature in 2013, to determine whether a worker is a contractor or employee. However, even taking into account the 20-factor test, in cases where there is demonstrable mutual benefit, it is likely that an employee/employer relationship will be found, giving rise to benefits under the Act.

If you have any questions about whether your workers would be, or not be, considered "employees" under the Act, you should seek legal counsel. We are here to help. To discuss any questions you may have, please contact Michael Sanders at 517.371.8210 or at [msanders@fosterswift.com](mailto:msanders@fosterswift.com).