UNPAID INTERNS ARE NOT PROTECTED UNDER WISCONSIN'S HEALTH CARE WORKER PROTECTION STATUTE

On July 22, 2014, the Wisconsin Supreme Court released *Masri v. State of Wisconsin Labor and Industry Review Commission*, 2014 WI 81, in which it held that an unpaid intern was not an "employee" subject to anti-retaliation protection under Wis. Stat. § 146.997, Wisconsin's whistleblower protection law for health care employees.

Asma Masri, a former "Psychologist Intern" at the Medical College of Wisconsin ("MCW"), filed a complaint with the Equal Rights Division of Wisconsin's Department of Workforce Development ("ERD"), claiming she had been wrongfully terminated for reporting "clinical/ethical concerns" to the administration, in violation of Wis. Stat. § 146.997. The ERD, concluding it did not have jurisdiction over the complaint of a non-employee, dismissed the matter. On agency review, Wisconsin's Labor and Industry Review Commission ("LIRC") affirmed the dismissal on the grounds that, as an unpaid intern, not an employee, Masri was not entitled to whistleblower protection.

On review, the Wisconsin Supreme Court adopted LIRC's construction of the statute and concluded that uncompensated interns are not employees within the meaning of the Health Care Worker Protection Law. Rejecting Masri's argument that the term employee should be broadly construed in favor of the statute's purpose—to protect patients—the Court noted that "[p]ublic policy is not a panacea for perceived shortcomings in legislation determinations." Instead, the Court adhered to fundamental canons of statutory construction and concluded that the plain and ordinary meaning of the term "employee," is one who works for compensation or other tangible benefits. "Because Masri received no compensation or tangible benefits," the Court concluded, "she was not an employee of MCW and was therefore not entitled to anti-retaliation protection under [the statute]."

In so holding, however, the Court expressly left open the possibility of interns qualifying as employees if they can establish their receipt of compensation or tangible benefits. Hence, the decision signals to health care organizations to be attentive to the benefits provided to interns, volunteers and others who work within their organizations to ensure that employee-status is not inadvertently conferred on them.

If you have any questions or would like additional information about this matter, please contact Sara MacCarthy at (414) 721-0478 or smaccarthy@hallrender.com or your regular Hall Render attorney.

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