



Should Your Summer Intern Be Paid?

Winter is on its way out. Trees are sporting fresh buds, the first flowers are bravely popping up and spring training is underway. Now is the time industrious high school and college students make plans for summer internships. If your company has considered offering an unpaid internship, we have some important considerations that may keep you out of hot water.

Though internships remain a great training opportunity for students and recent grads, *unpaid* internships have come under fire in recent years. Large employers including the Hearst Corporation, Condé Nast Publications, and the Fox Entertainment Group, have all faced difficult legal battles initiated by unhappy, unpaid interns. Such programs have drawn harsh criticism by those who believe they are exploitative, devalue the work done by the student, and exclude students who can't afford to work for free. Many have also labeled these programs "illegal", claiming they violate wage and hour laws.

Federal law, however, allows private for-profit companies to take on unpaid interns as long as the internship meets six very specific criteria. According to the Fair Labor Standards Act (FLSA), an internship must meet each and every one of the following standards in order to be exempt from minimum wage standards set forth in the law:

1. *The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment.* Your program should include specific goals for the intern's development. Some have gone so far as to create a program description, an outline, a syllabus and actual assignments. Consider working with a college, university or tech school that will oversee the internship and offer educational credits.
2. *The internship experience is for the benefit of the intern.* Your intern is in training and should leave with a better understanding of your industry/professional skills required than when he/she arrived.
3. *The intern does not displace regular employees, but works under close supervision of existing staff.* In other words, interns are NOT "seasonal help". If you would have hired additional employees or required existing staff to work additional hours had the intern not come on board, then the interns will be considered an employee and entitled to pay under the FLSA. On the other hand, if you have them shadow an employee, under that employee's constant supervision, the intern's activity is more likely to be viewed as a bona fide educational experience.
4. *The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded.* Though some lawyers interpret this very strictly to mean that the company can gain absolutely no benefit from the intern, the DOL has been a bit more realistic. In a 2002 decision by the DOL, the employer's "net gain" was the main

consideration. In general, if the intern benefits more from an internship than the employer who sponsored the intern, then the intern would not be considered an employee by the DOL.

5. *The intern is not necessarily entitled to a job at the conclusion of the internship.* In fact, the U. S. Department of Labor (DOL) recommends that an employer draft a written agreement with the intern stating that the intern should have no expectation of employment and should not presume any guarantee of employment after the internship.
6. *The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.*

According to the DOL, if all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the act's minimum wage and overtime provisions do not apply to the intern. If your program fails in any of these areas, you must either revise the program or, at the least, offer minimum wage to the interns. Employers who fail to meet these criteria but continue to "employ" unpaid interns may be facing lawsuits as well as paying back pay, taxes, and penalties.

Let's assume your program meets all these criteria and you are ready to introduce that intern to your staff. Just one more thing you must keep in mind. You may not need to compensate your interns for their time, but you must be sure to treat them like employees in every other way. That means extending to them the same standard of fair and considerate treatment that you are legally obligated to extend to your employees.

A recent New York City law gives unpaid interns in the city the right to sue their "host company" in the event of harassment or discrimination. This 2014 law was prompted by the case of an unpaid intern at a news agency that accused her "employer" of sexual harassment. Her case was thrown out by a federal judge who ruled, since she was not an actual employee of the company, she was not covered by the laws that govern the employer/employee relationship. This case, along with other recent cases, has put unpaid internships on the radar of state legislators and law firms seeking to cash in on the controversy. New York City's recently implemented law may be the first of many similar local or state laws.

If you are still on the fence, but don't want to scrap the program, consider the advantages of offering a paid internship. According to one internship "job board", paid internship positions receive an average of two and a half times as many clicks as unpaid positions. No surprise, these paid internships tend to attract top-tier students and grads. And they tend to create happier interns. Happy interns are more likely to contribute to the team and create goodwill for your company among other soon-to-be grads in the field.

No matter what you decide, remember to treat your interns, paid or unpaid, with the same considerations you extend to your employees. In every case, it remains a best practice to clearly communicate expectations to your interns and employees alike.

For more information about internships, or any other HR issue, send your questions to hrhelpline@eastcoastrm.com or give us a call at 724-864-8745. We'd be happy to help.