

Wage & Hour

Internships Offer Value to Employers And Students, but Beware Legal Pitfalls

Employers considering an internship program must determine the duties and responsibilities involved, whether participants will be paid, the number of hours per week required and whether college credit will be offered, a human resources executive and employment attorneys told Bloomberg BNA in April 22 interviews.

Decisions about a program must be made with a careful eye on the legal restrictions, they said, but when done correctly, internships can be a boon for both sides.

Interns bring a lot to the workplace, including helping the company build a talent pipeline, Christina Schelling, vice president of strategic recruitment and engagement in human resources at Prudential Financial, said.

Schelling said Prudential's internships, which are paid, incorporate work on strategic projects, networking opportunities and interaction with senior leaders. "The bulk of what they do in their internship is usually a project that is strategic and directly connected to a business priority and that can be measured at the end of the program as far as performance," she said.

Because Prudential has multiple business sectors and different options in each, an intern could one day have a career there with a lot of opportunity for growth, Schelling said.

"They do get a really good feel for the business during their time here," she said, "which we've heard is what makes them choose to come back."

Prudential Adds Diversity Component. Schelling said Prudential hosts the Peak Leadership Conference before selecting interns. This is an interactive three-day leadership conference designed to involve a diverse group of first- and second-year college students from targeted colleges and universities and offer early exposure to career opportunities in the financial services sector.

Schelling said Peak helps the company get to know the students and better select summer interns.

"I think the idea is that we want to know them earlier and longer, and we really put a lot of effort into not just sharing who we are, but getting to know who they are and who they want to be personally and profession-

ally," Schelling said. "I think that is a differentiator for us."

DOL Offers Guidelines. Regardless of an employer's intentions with regard to internships, the programs have come under fire recently and been the subject of a number of high-profile lawsuits.

In March, Viacom agreed to \$7.2 million deal to settle interns' minimum wage claims (33 HRR 291, 3/23/15), while in 2014, Conde Nast Publications (32 HRR 1243, 11/24/14) and NBCUniversal Inc. (32 HRR 1159, 11/3/14) reached similar agreements with participants in their internship programs.

According to the Labor Department's Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act, unpaid internships must meet the following six criteria to comply with the FLSA:

- The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment.
- The experience is for the benefit of the intern.
- The intern doesn't displace regular employees but works under close supervision of existing staff.
- 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.
- The intern isn't necessarily entitled to a job at the conclusion of the internship.
- The employer and the intern understand that the intern isn't entitled to wages for the time spent in the internship.

To Pay or Not to Pay? Juno Turner, a partner in the New York City office of Outten & Golden LLP, which brought major lawsuits on behalf of unpaid interns against Conde Nast and Fox Searchlight (31 HRR 623, 6/17/13), said employers can avoid a lot of headaches by simply paying their interns. The "best, best practice is to pay your interns. It is not a huge amount of money when you're talking about the minimum wage, and that is the best way to ensure there is no liability," Turner said.

"If your employees are saying, 'Gosh I have an awful lot of work coming up this summer, I'd really like to get

an intern to help me with that,' that should be a red flag," she said.

On the other hand, Turner said, "if your employees are saying 'I think I have a lot that I can teach somebody, why don't I have somebody come in and shadow me for the summer,' then I think that's going to be much more likely to be compliant."

She said a program where an intern spends a lot of time shadowing employees and that has a formalized training or classroom component is much more likely to be considered aboveboard. You don't want interns "doing the day-to-day productive business of the company," Turner said.

Julie Proscia, a partner in the St. Charles, Ill., office of management-side firm SmithAmundsen, said that the DOL is "pretty strict about the guidelines for unpaid internships."

"One of the things that the DOL is looking at is that the position is educational and offers training, but it can also be to the benefit of the employer," Proscia said.

While there's no requirement for a specific educational credit, Proscia said she highly recommends that "the internship is an extension of the individual's educational experience, and that it be part of a recognized [college] program."

She added that there's no hard-and-fast time limit on internships, but she said she wouldn't recommend going longer than a year because that would be similar to time spent in school. "I think that is substantially safer," she said. "It is very hard to justify or to explain

how you have an unpaid intern who is an intern beyond the length of a college program."

More Leeway With Paid Slots. Companies have a substantial amount of latitude with an internship program's design, if the position is paid, Proscia said. She said a paid internship can be much more to the benefit of the organization, allowing employers to have interns perform the duties and tasks they essentially would have any employee in that position perform, "as long as they are still paid the regular wages, and overtime if they are working more than 40 hours in a workweek."

According to Proscia, although a paid internship is an initial investment that doesn't necessarily have a concrete economic reward right away, "it is a good long-term investment to have an opportunity to train individuals that can come into your field."

"Now that the economy has improved and there is a lot more breathing room," Proscia said, paid internships "are something to invest in."

"Because it's the next generation, giving them these opportunities is a way for not only the company to benefit in the long run, but the individuals to really ascertain if this is a field for them," she said.

By CARYN FREEMAN

To contact the reporter on this story: Caryn Freeman in Washington at cfreeman@bna.com

To contact the editor responsible for this story: Simon Nadel at snadel@bna.com

To request permission to reuse or share this document, please contact permissions@bna.com. In your request, be sure to include the following information: (1) your name, company, mailing address, email and telephone number; (2) name of the document and/or a link to the document PDF; (3) reason for request (what you want to do with the document); and (4) the approximate number of copies to be made or URL address (if posting to a website).