

Thinking About Hiring Interns? Tips for Doing It Right.

Labor & Employment Law Update

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Despite winter-like weather across much of the country, it is March and that means college students are searching for internships. On January 30, a federal appeals court heard oral arguments on a pair of class action lawsuits in which interns in the film and publishing industries sued for unpaid wages. Although the court has yet to rule, there are steps your organization can take now to avoid this type of litigation.

Under the FLSA anyone who performs work is entitled to compensation. For nonprofits, federal regulations clarify that “volunteers” who freely serve public agencies for civic, charitable or humanitarian reasons are not “employees.” In 1947, the U.S. Supreme Court carved out an exception applicable to for-profit businesses, holding that “trainees” were not “employees.” In 2010, the U.S. Department of Labor published Fact Sheet #71 which states an unpaid internship at a for-profit business is legally permissible only if:

1. It is similar to training given in an educational environment;
2. It primarily benefits the intern, not the organization;
3. The intern is closely supervised by existing staff and does not displace regular employees;
4. The employer derives no immediate advantage from the intern's activities; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job after the internship; and
6. The employer and the intern understand that the intern is not entitled to wages.

Whether these factors are a rigid checklist or simply a guiding framework is at issue in the pending Second Circuit case. For now, for-profit businesses should consider this a checklist. If you fall short on any factor, the internship should be paid.

All organizations that hire unpaid interns — for-profit businesses and not-for-profit organizations alike — should:

1. Make clear at the onset that the position is unpaid and is not likely to lead to a paid position with your organization (preferably this will be in writing signed by both parties).
2. Coordinate with the student's educational institution to provide credit for the internship whenever possible.
3. Never use an unpaid intern to fill a paid position (even temporarily).
4. Remember that internships are designed to provide educationally rich learning experiences, not a source of free labor.
5. Recognize that while having an internship program may benefit the organization overall, the program itself will likely decrease efficiency and could negatively impact the organization's bottom line.
6. Follow all normal hiring protocol if you do consider a former intern for a paid position.

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