

To Pay or Not to Pay:
How to Handle Compensation for Summer Interns

By Maureen E. Carr, Esq.

With summer rapidly approaching, many employers are thinking about hiring summer interns. This can be a great opportunity for both employers and interns, but careful consideration should be given to whether interns should be compensated.

In recent years, a number of high-profile employers have been sued by unpaid interns alleging violations of the Fair Labor Standards Act (FLSA), including Fox Searchlight Pictures (by two interns who worked on the set of *Black Swan*), Hearst Corporation (by an intern for *Harper's Bazaar*), and Public Broadcasting Systems (by an intern for *The Charlie Rose Show*). These cases should serve as a reminder to employers that interns are not just an opportunity for free labor.

Typically, the FLSA's minimum wage and overtime requirements apply to any individual who is "suffered or permitted to work" for an employer. However, a potential exception exists for certain interns, trainees, and new hires who are distinguishable from typical "employees." Under guidelines issued by the Wage and Hour Division of the Department of Labor, an unpaid internship is permissible if the following six factors are met:

1. The internship, although it includes actual operation of the employer's facilities, is similar to training that would be provided in an educational setting;
2. The internship is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded as a result of the intern;
5. The intern is not necessarily entitled to a job at the completion of the internship; and
6. The employer and intern understand that the intern is not entitled to wages for the time spent in the internship.

As these guidelines suggest, the internship exception to the FLSA is quite narrow. Employers who wish to utilize unpaid interns must closely manage their internship programs to ensure that they comply with the DOL guidelines. The following are helpful tips to prevent FLSA issues with unpaid interns:

- Use a simple agreement for all interns that states that the intern is not entitled to wages and that the internship does not guarantee future employment.
- Do not use interns as substitutes for regular employees. This can be particularly tempting in summer months when regular employees are taking vacations, but an unpaid intern should perform a significant amount of work that would normally be done by an employee.
- Assign a mentor to each intern to ensure that the intern is being closely supervised and exposed to a variety of enriching experiences.

- Structure your internship program as a form of “job shadowing” where the intern is exposed to various job functions, but does not consistently perform tasks that would normally be done by an employee.
- Associate your internship program with an academic institution(s) where the intern receives academic credit as part of the internship.

Employers who utilize unpaid interns should consult with their attorneys to ensure compliance with the DOL guidelines.

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