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Unpaid Internships: Do They Violate the FLSA?

The U.S. Department of Labor (“DOL”) is cracking down on unpaid internships, finding that few “for-profit” employers can offer such internships without violating the Fair Labor Standards Act (“FLSA”).

The DOL issued a “Fact Sheet” to help employers determine whether their unpaid internship programs comply with the FLSA. If the following six elements are satisfied, an employment relationship most likely does not exist and thus the intern does not need to be paid: (1) The internship is similar to training which would be given in an educational environment; (2) The internship experience is for the benefit of the intern; (3) The intern does not displace regular employees but instead works under close supervision of existing staff; (4) The employer providing the training derives no immediate advantage from the activities of the intern; and on occasion, its operations may actually be impeded; (5) The intern is not necessarily entitled to a job at the conclusion of the internship; and (6) The employer and the intern understand that the intern is not entitled to wages for the time spent at the internship.

To ensure that an unpaid internship offered by a for-profit employer complies with the FLSA, the internship should be of fixed duration, structured around an academic experience, and should provide interns with skills that translate to other employment settings. The intern should not perform routine work that the employer relies on, nor should the intern replace regular employees.

If those tests are not met, and the employer is benefitting from the work performed by the “intern,” then the intern should be paid. In light of the increased number of DOL audits, prudent employers will ensure that their programs comply with the law.