

Rules Governing Unpaid Internships

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With the poor economy employers are seeing more adults willing to take unpaid internships to get their foot in the door. Questions often arise whether it is legal to hire them without pay.

The short answer is yes, but employers must follow certain rules to avoid wage claims for the time worked by interns. Because of the perception that these rules are often violated, the U.S. Department of Labor (“DOL”) has taken a greater enforcement interest in this area, and is cracking down on unpaid internships. Nancy J. Leppink, the Acting Head of the DOL’s Wage and Hour Division, recently stated in the NY Times that, “If you’re a for-profit employer or you want to pursue an internship with a for-profit employer, there aren’t going to be many circumstances where you can have an internship and not be paid and still be in compliance with the law.”

According to the DOL, there are six criteria that employers must use to determine whether an intern should be paid:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction;
2. The training is for the benefit of the trainees;
3. The trainees do not displace regular employees, but work under their close observation;

4. The employer that provides the training derives no immediate advantage from the activities of the trainees, and on occasion the employer's operations may actually be impeded;

5. The trainees are not necessarily entitled to a job at the conclusion of the training period; and

6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

Unless all six of the factors are met the "intern" must be treated as a paid employee who is subject to the minimum wage and overtime requirements of the Fair Labor Standards Act.

This is just one more area where DOL enforcement actions have accelerated. Both the state and federal DOL have also become more aggressive in pursuing misclassifications by employers of non-exempt employees and independent contractors. As these types of violations can often lead to expensive class action lawsuits, employers should have counsel periodically review their employee classifications for legal compliance.

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