

Unpaid Internships: Free Today . . . Costly Tomorrow - includes Video

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With the summer season approaching, college and high school students will be looking for opportunities to improve their resumes and gain valuable experience. The prospect of hiring a talented student - or someone transitioning between careers - who is willing to work for free is enticing to many employers.

In many cases, however, the unpaid aspect of the internship violates the **Fair Labor Standards Act (FLSA)**. Lawsuits by unpaid interns to recover wages, including liquidated damages and attorney's fees, although still uncommon, are on the rise.

Unpaid internship programs can be an appropriate method of providing training if they are designed properly and are primarily for the benefit of the intern and not the employer. However, to paraphrase this week's Time magazine article titled "Hard Labor: Inside the Mounting Backlash Against Unpaid Internships," employers are not entitled to free labor just because they slap the title "intern" on the position.

The U.S. Department of Labor uses the six criteria below to determine whether an unpaid internship falls outside the employment context covered by the FLSA.

- The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
- The internship experience is for the benefit of the intern;
- The intern does not 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 is not necessarily entitled to a job at the conclusion of the internship; and
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

We recommend that you evaluate your internship programs against these six criteria prior to

extending offers of unpaid employment to prospective interns. Interns are unlikely to be exempt employees under the FLSA. As a result, if your internship program does not meet all six criteria, you should plan to pay interns at least minimum wage, currently \$7.67 in Florida, and, when necessary, the applicable overtime rate for hours worked over 40 in a work week.

Rachel D. Gebaide and Melody B. Lynch of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. discuss the pros and cons of unpaid internships and what employers should watch out for.

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