



## Summer Internships – A World of Opportunities ... To Be Sued

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Does your business have an unpaid summer internship program? You may be paying more than you think. Recently, employers such as Hearst Corporation, "The Charlie Rose Show" and Fox Searchlight Pictures have been named in lawsuits for allegedly violating the Fair Labor Standards Act (FLSA) by failing to pay interns. As most employers are aware, the FLSA imposes minimum wage requirements for hourly, non-exempt employees. But, many employers may not understand what qualifies a summer intern as an employee who really should be paid at least the minimum wage. What should you do?

The Department of Labor has issued a guidance on the use of unpaid interns by for-profit employers. To avoid the imposition of minimum wage requirements, internship positions must meet all of the following criteria: (1) Provides training similar to training provided by educational institution; (2) Provides immediate benefit to the intern; (3) The intern does not displace a regular employee and is closely supervised by existing staff; (4) The employer derives "no immediate advantage" from the intern's efforts and in some cases its operations may be impeded by the intern's activities; (5) The intern is not entitled to a job at the end of the internship program; and (6) The employer makes clear to the intern that the intern will not be paid for his/her efforts.

Here are some suggestions on designing a defensible unpaid internship program that complies with the FLSA.

- **Provide Educational Training:** Employers should provide interns with broad educational benefits. This requires something more than just on-the-job training based on observation. It should include both class-room style training and experiential training. Employers can achieve this goal by structuring the program to provide individual training or by assigning interns individual tasks.
- **Ensure the Intern Receives the Primary Benefit:** The intern, not the employer, must receive the immediate benefit of the program. To accomplish this, employers may consider partnering with educational or vocational institutions that will offer interns academic credit for participation in the program. Employers must avoid requiring interns to perform routine tasks typically performed by paid employees or other administrative tasks that are not eligible for academic credit.
- **Supervise the Internship Program:** Employers should designate supervisors for the internship who are willing to commit extra time to provide ongoing supervision, mentoring, and instruction to the interns. These supervisors should closely monitor the program to ensure interns are performing meaningful educational work.
- **Document the Costs:** The value the employer receives from an intern's productive work should be offset by the employer's burden from the training and supervision it provides. Employers should document the training, monetary benefits, and costs the internship program brings to the company to

demonstrate it is not deriving an immediate advantage.

- **Written Communication:** Interns should be required to execute a “pre-employment acknowledgement” indicating the internship: (a) is unpaid, (b) for a defined length of time, and (c) will not result in a job offer.
- **When in Doubt, Pay Minimum Wage:** If there is any doubt about an unpaid internship program, employers should avoid legal issues by paying interns minimum wage.

Don't just assume your company's name on a resume is sufficient payment; free labor may come at a cost.

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