

Know the Law Before Taking on Summer Interns

If you hire interns during the summer months as a way to buffer your operations during this busy period, you need to understand your obligations as an employer, particularly if your interns are unpaid.

Under federal law, the majority of interns must be paid at least the prevailing minimum wage in your state. If you don't pay an intern, you may likely be in violation of the Fair Labor Standards Act in addition to similar laws in your state.

The only unpaid internships that are considered legal are education and training programs that are meant to provide students with professional experience as part of their overall education. Unpaid internships must be academically focused, and they must benefit the interns through the experience of working for you.

If not, you may be violating the law if you are not paying them.

The Department of Labor has a very fine definition of what constitutes an unpaid internship compared to a position that is merely just another summer job.

The DOL has six criteria that must be satisfied for an intern to be unpaid, and each one must be met:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in an educational institution (in other words, an extension or practical application of what is being taught in the classroom).
2. The training is for the benefit of the trainee (e.g., college credit, valuable experience, ability to observe the practical application of classroom instruction in the workplace).
3. The intern does not displace regular employees, but works under close observation (e.g., the intern works a very limited number of hours per week, and the intern either performs work that normally would be outsourced or not otherwise performed by a regular employee or merely shadows another employee).
4. The employer who provides the training derives no immediate advantage from the activities of the trainees, and on occasion the employer's operations may actually be impeded (e.g., actual employees are diverted from their primary tasks to supervise, shadow or assist the intern or the intern is shadowing an employee but producing no useful work themselves).
5. The interns are not necessarily entitled to a job at the completion of the training period.
6. The employer and the interns must both understand that the interns are not entitled to wages for the time spent in training.

The key is that you need to consider any unpaid internship as an extension of the student's education. It should be a position where they have the opportunity to apply skills and knowledge that they amass in the classroom in a real working environment.

The DOL has consistently applied these criteria in response to questions about the employment status of student interns.

Interns who do not meet all of the listed criteria are employees, and are entitled to be paid the minimum wage.

What to do

To make sure you are complying with the law, you should follow the checklist created by the DOL.

Use this checklist to also help you understand whether you are going to offer an unpaid or paid internship.

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