

Guidance on Using Unpaid Interns

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With school about to start, students looking for internships will not be far behind. If your company has an internship program, you need to be aware of the regulations governing the same.

Unpaid internships can be a good thing. They provide students with real world training and experiences, which supplements the learning that they get in the class room. For a business, they are able to give back to the community, help young students, and may even find a future valuable employee.

However, as with everything else, care must be taken in how you go about using interns. Generally, the Fair Labor Standards Act ("FLSA") requires employers to pay individuals at least the minimum wage for all work that is "suffered or permitted to be worked." As you may know, that is a very broad term and essentially obligates an employer to pay any individuals that perform any work for it. Thus, the Department of Labor ("DOL") could find that an unpaid intern is actually an employee and is therefore owed at least the minimum wage.

However, the Supreme Court has held that the term "suffered or permitted to work" does not include a person whose work serves only his or her own interests, not the interests of the company who provides the aid or instruction. The determination as to whether an unpaid internship program meets this exclusion depends on six criteria that the DOL has established:

1. 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;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. 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;
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 in the internship.

If all of the factors above are met, an employment relationship does not exist under the FLSA.

The regulations go into much more detail for some of the above. For more information contact Scott Leah at sleah@tuckerlaw.com or your Tucker Arensberg attorney.