

## Hiring an unpaid summer intern? It's more complicated than you think

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With the spring semester ending, many high school and college students are returning home to seek employment or valuable work experience that may lead to permanent employment after graduation.

Fueled by the lack of jobs and a flood of available candidates, many students are willing to be paid with "valuable experience" instead of money. While this may sound appealing, employers beware: Engaging unpaid volunteers or interns for the summer is rife with potential legal liability under both state and federal law.

For instance, suppose your colleague's daughter has returned from college for the summer. Potential employers have told her that they need someone with more experience before they can extend her an offer for the summer. Your colleague proposes that she volunteer at your business over the summer and pitches that this will be a win-win -- she will gain some work experience and you can use her to finish some long-standing projects.

Before you agree, you must determine whether the contemplated volunteer relationship is lawful under state and federal regulations regulating volunteer opportunities in New Hampshire. Failing to do so can result in substantial financial penalties for your organization.

In New Hampshire, an employer that seeks to engage a student for subminimum wage must comply with the New Hampshire Department of Labor's School to Work program as well as federal requirements under the Fair Labor Standards Act.

School to Work is designed to ensure that students engaged by employers for practical experience are receiving work experience related to their course of study. Thus a New Hampshire employer only may engage an unpaid intern or pay an intern with a stipend equivalent to subminimum wage in the following limited circumstances:

- The internship is created in conjunction with the student's secondary school or college and has been approved by the state Department of Labor. To obtain approval, the employer or the representative of the school that the intern attends must submit an application to the Department of Labor for approval of non-paid work-based activities.
- The internship, even though it includes actual operation of the employer's facilities, is similar to the training that 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, who on occasion may actually impede the employer's operation.
- The intern is not necessarily entitled to a job at the conclusion of the internship.
- The employer must comply with all safety training required by state law.
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.
- The employer must be pre-approved by the Department of Labor to participate in the internship.

The state Labor Department will approve an employer to engage students to work solely in exchange for practical experience if the internship is in conjunction with an approved school program and the department's records do not indicate that the employer is in violation of New Hampshire labor laws.

Approval will not be provided if, among other things, the employer does not have a written safety program and an up-to-date safety summary form on file.

Can your colleague's daughter just volunteer?

In most circumstances, the answer is no. New Hampshire and federal wage and hour laws prohibit an employee from volunteering for a for-profit employer.

To be a volunteer under New Hampshire law, the employer must be a nonprofit public, charitable or religious facility. The law also requires that the volunteer not be in a position that displaces a regular employee and not work in a position that traditionally leads to employment.

If these criteria can be met, then it is permissible under the law to provide a volunteer opportunity to a student seeking valuable experience for the summer.

If your organization plans to engage a volunteer or an intern for less than minimum wage this summer, you are required by New Hampshire's wage and hour law to maintain a record that memorializes that the intern is not an employee.

If your business is engaging an intern for the summer, the employer should keep on file documentation of the Department of Labor's School to Work program approval, as well as enter a memorandum of understanding with the intern that reflects that this relationship is not an employment relationship.

For volunteers, the public, charitable or religious entity should require that the volunteer enter a similar memorandum of understanding and maintain it in its records.

While the process for approval to use unpaid student labor may sound daunting, labor and employment counsel can help you determine if you meet the applicable standards and assist you memorializing the arrangement to limit possible future liability under the wage and hour laws.

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