

Internships: Risks and Rewards

By Karen Aframe and Naomi Butterfield | October 4, 2013

The interns are suing.

Interns across the country have filed class-action suits against employers such as Fox Entertainment Group and Hearst Corp. The plaintiffs claim they were incorrectly classified as interns when they should have been classified as employees and paid wages. In many of these cases, the interns allege they performed office work such as answering telephones, preparing copies, making deliveries or getting lunch for paid employees. The plaintiffs allege that had the interns not performed these tasks, the employers would have had to hire more paid staff or required existing paid staff to work additional hours.

Considering the current economic climate, many high school and college students across New Hampshire are eager to enter an internship and be paid with valuable experience, or to accept a stipend that is less than minimum wage. Employers in all industries are often eager to welcome unpaid interns to have extra hands available. But accepting interns can make a business vulnerable to liability if the internships are not properly designed and monitored.

What can an employer in New Hampshire do to avoid these legal pitfalls and limit its liability when accepting interns?

Employers should familiarize themselves state and federal guidelines to determine if an internship qualifies as a position for which the person can be paid nothing or less than minimum wage. The U.S. Department of Labor provides that an unpaid or subminimum wage internship must:

- Include training similar to that given in an educational environment
- Be for the benefit of the intern
- Not displace regular employees
- Be under the close supervision of existing staff
- Not provide an immediate advantage to the employer (interns may require additional employer time or resources)
- Not entitle the intern to a job at the conclusion of the internship
- Make clear the employer and the intern both understand that the intern is not entitled to any wages

In New Hampshire, an employer seeking to bring on an intern for less than minimum wage must also comply with the New Hampshire Department of Labor's School to Work program. While similar to federal regulations, the New Hampshire Department of Labor also requires that the employer be pre-approved by the Department of Labor. The DOL will consider the

employer's record of labor violations, including safety, as well as wage and hour compliance prior to approval.

The more an internship is structured around a classroom or academic setting, the more likely it will be viewed as an extension of the intern's educational experience. The more the internship provides skills useful in multiple employment settings, the more likely the experience will be viewed as training for the intern.

Employers or interns may try to sidestep these state and federal regulations by claiming an individual is a "volunteer." New Hampshire prohibits for-profit companies from engaging volunteers. However, New Hampshire and federal law permit public, charitable or religious facilities to engage volunteers, provided they meet certain criteria. For example, volunteers are not permitted to displace a paid employee and cannot perform duties that traditionally lead to paid employment.

Any employer considering bringing in a volunteer or an intern should put the agreement between the individual and employer in writing, making clear the relationship between the two. This agreement should state that the intern or volunteer is not an employee and is not being offered a wage as compensation. If offered as part of an educational course or for educational credit, many schools have agreement forms or contracts for the intern and employer to complete. Employers must carefully review these forms to understand their obligations. Depending on the industry, employers may also want to make certain that interns have health or professional liability insurance.

Despite the complexity of regulatory requirements, an internship can be a rewarding experience for both the intern and employer. An intern may gain useful experience and practical training to jumpstart a career, while an employer has the opportunity to contribute to the training of the workforce in its industry. Employees in the workplace are often motivated by the enthusiasm and ideas that come from someone interested and seeking to learn the ropes.

Labor and employment counsel can help your business navigate these difficult waters to limit liability and maximize the benefit to both intern and employer.

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