

The Perils of Not Paying Your Interns

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The United States Department of Labor, Wage-Hour Division (WHD) is cautioning employers against the use of unpaid interns. Violations could be very costly.

WHD enforces the federal Fair Labor Standards Act (FLSA), which requires payment of minimum wages and overtime. The WHD has hired 250 new investigators and has served notice that "there's a new sheriff in town." Representatives have spoken publicly about enhanced enforcement. Most recently, the acting head of the WHD specifically cautioned employers against the use of unpaid interns.

There is no FLSA exemption at for-profit companies for unpaid student interns or unpaid volunteers. There is an exemption -- a very narrow one -- for "unpaid trainees."

Six Requirements

In its Field Operations Handbook, Section 10b11, the WHD lists six requirements for unpaid trainees:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees or students.
3. The trainees or students do not displace regular employees, but work under their close observation.
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion operations may actually be impeded.
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training.
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Even if all of the other five conditions are met, an employer may face liability if the WHD (or a court) decides that the training was not "similar to that given in a vocational school."

In an official Opinion Letter in 2006, the WHD opined that a "student extern" program -- under which a college arranged for students to shadow employees of a company for one week -- met the requirements for the trainee exemption. The WHD cited the brevity of the program, the fact that the students did not do productive work that would otherwise have been done by employees, and the fact that "the training the externs receive is a practical application of material taught in a classroom."

Stiff penalties

If an individual who works as an unpaid intern is found not to meet the above requirements, the employer could face double back pay for all unpaid interns going back for 3 years before the litigation began. There may also be liability under state laws.

The bottom line is that there is no easy way to use unpaid students or unpaid interns at a for-profit company. In limited situations, however, unpaid trainees may be a possibility. If you have questions about the unpaid student employee exemption, please contact your Labor and Employment attorney at Warner Norcross & Judd.