

Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

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Can My Company Offer Unpaid Summer Internships? Yes, but be careful you don't violate the wage and hour laws.

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High school and college students often are willing to work for little or no pay during the summer months to bolster their resumes. Businesses see this as a good opportunity to get some extra help around the office. However, private sector, "for-profit" employers need to be aware that they are required to pay at least minimum wage and overtime to summer help unless these internships or training programs meet the following criteria:

1. The internship is similar to training which would be given in an educational environment;
2. The internship is for the benefit of the trainees;
3. The interns do not displace regular employees, and work under close supervision of existing staff;
4. The employer derives no immediate advantage from the activities and, on occasion, its operations may actually be impeded;
5. The interns are not guaranteed permanent positions at the conclusion of the internship; and
6. The employer and interns understand beforehand that the internship is unpaid.

See U.S. Dept. of Labor, Wage and Hour Division, [Fact Sheet #71](#).

The determination whether an internship or training program meets all six requirements depends upon all the facts and circumstances of each program. In addition to owing unpaid wages and potentially hefty fines, unpaid programs that do not meet all of the Department of Labor's

criteria could lead to legal problems involving workers' compensation, employee benefits, unemployment insurance and federal and state taxes.

Employers should structure unpaid internships to meet the above criteria. Also consider having a written agreement with the interns outlining the nature of the work and that the program is being operated to provide a learning experience for the interns. If in doubt about compliance, employers should pay at least minimum wage and overtime to avoid legal problems because the Fair Labor Standards Act, the federal statute that covers minimum wages and overtime, as well as state wage and hour laws, define "employ" very broadly.

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