

THE PITTER PATTERN OF (UNPAID?) LITTLE FEET

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Or how to violate the FLSA.

Summer is coming! Yippee! For those of us that live in Michigan there are not 3 better words. After a long winter of snow and wind and cold we get to see the sun (at least once in a while over here in Grand Rapids). It gets warm, and by warm I mean above 40 degrees. Things turn green. And at work we get to hear the pitter patter of eager little feet running around the office. And those eager little feet are attached to eager little interns. And those eager little interns are very quick to tell us all how old and stupid we are and how they are just brilliant and given half the chance they can straighten out our company. In fact, to hear some of them tell it, the whole industrial revolution was a myth and nothing actually happened before they were born in 1990 something. Yes, I said 1990 something. All around your office you will have people born in 1990 something.

Here at good old WNJ they are a bit older because we don't hire interns, we hire summer clerks. Summer clerks are a peculiar breed of intern who . . . well, to avoid any trouble I'm just not going to get into it here.

So here is the big question? Does your summer internship program violate the Fair Labor Standards Act? How can that be you say? Internships are not paid? It is a right of passage. Oops. Wrong. If you work for a regular old for profit company it is almost impossible for you to have an unpaid internship program without violating the FLSA.

That's right, I said it, YOU HAVE TO PAY THOSE EAGER LITTLE INTERNS. Now you don't have to pay them a lot, actually only minimum wage if you want, but you've got to pay them.

WH Publication 1297, published in 1985, before most of your little eager interns were born, and Section 10b11 of the DOL Field Operations Handbook lays out 6 criteria for when you DON'T have to pay what the DOL calls trainees. Here they are:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction;
2. The training is for the benefit of the trainees;
3. The trainees 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, and on occasion the employer's operations may actually be impeded;

5. The trainees are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

Miss one of these requirements and you can be found liable. Liable for what you ask? How about double back pay for all unpaid interns going back up to 3 years and you get to pay the interns' attorney fees.

By the way, yes, we pay our summer clerks.