

Is Your New York or New Jersey Business Hiring Interns This Summer?

by Ramon Rivera on April 18, 2012

At Scarinci Hollenbeck, we have already hired several interns to work with us this summer. While summer internships are often a great experience for the employer and the students, they can also spell doom for unsuspecting businesses that look to interns as “free” labor.

To avoid a costly New York or New Jersey employment lawsuit, it is important to determine whether your interns must be paid in accordance with the Fair Labor Standards Act.

To start, internships in the “for-profit” private sector will most often be viewed as employment, unless the following Department of Labor test is satisfied.

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the law’s minimum wage and overtime provisions do not apply to the intern. Meanwhile, interns who do qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.

If you are uncertain whether your interns should be considered employees or trainees under the FLSA, it is imperative to consult with a member of our Labor and Employment Law Group.