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In This Issue

Thinking about Hiring an Unpaid Summer Intern? What You Need to Know.....Page 1

Pets in the Workplace: Should Your Company Open its Doors to Employees' Furry Friends?.....Page 2



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THINKING ABOUT HIRING AN UNPAID SUMMER INTERN? WHAT YOU NEED TO KNOW

BY ARIANNA S. GLECKEL, ESQUIRE



With summer approaching, you may be considering hiring an unpaid intern for the summer months. The process for doing so seems pretty cut and dry. However, litigation in the area of internships has recently increased due to several lawsuits where interns sued their former employers alleging violations of state and federal wage and hour laws by failing to pay interns for work that should have been performed by paid employees.

In order to determine whether your intern is entitled to minimum wage or overtime, the U.S. Department of Labor (DOL) has a six-factor test to determine if the intern should in fact be treated and classified as an employee who must be paid.

The factors the DOL considers when classifying an intern vs. an employee are the following:

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 these factors are present, then the position is in fact an unpaid internship. However, many states have additional factors they consider to determine whether a worker is an intern or an employee under state wage and hour laws. Be sure you also review your state's factors.

It is strongly recommended that employers review their internship program to see if it meets these factors and review the state specific factors to ensure that your unpaid internship qualifies as an unpaid position.

For additional information on internships, please contact Arianna S. Gleckel at agleckel@beankinney.com or 703.525.4000. Ms. Gleckel is an associate attorney at Bean, Kinney & Korman, P.C. in Arlington, Virginia, practicing in the areas of employment law, creditors' rights and civil and commercial litigation.

PETS IN THE WORKPLACE: SHOULD YOUR COMPANY OPEN ITS DOORS TO EMPLOYEES' FURRY FRIENDS?

BY RACHELLE E. HILL, ESQUIRE



Pet Sitter International's Take Your Dog to Work Day ("TYDTWDay") is Friday, June 21, 2013. With this event on the horizon, it raises questions regarding the legal and practical aspects of allowing pets in the workplace. What policies should be in place prior to opening the doors to your employees' four-legged friends, whether it's a permanent policy or a one-day event?

Benefits of Allowing Pets In the Workplace

With 39 percent of households having dogs, canines in the workplace is a growing trend among employers. Many businesses, including Google and Replacements, Ltd., allow employees to bring their dogs to work. Congress has been dog friendly since the 19th Century, although it has not allowed dogs on the floor of the House and Senate since 1811 due to a complaint that Virginia Congressman John Randolph's dogs were too intimidating. Offering a dog friendly environment offers a chance for a business to stand out amongst its competition. In particular, TYDTWDay creates an opportunity to partner with a local shelter or rescue group, allowing a business to form positive ties with its community.

Allowing pets in the workplace provides employers a low-cost opportunity to boost morale when many companies are cutting back. For dog owners, this benefit may attract employees and increase retention by providing increased job satisfaction. Pets in the workplace can create a positive environment. Studies show that having dogs in the workplace lowers stress and fosters increased communication among employees promoting a more unified workforce. Finally, allowing pets in the workforce could encourage people to work longer hours, which will increase a company's bottom line.

Legal Liability Relating to Dogs in the Workplace

Not surprisingly, there have been legal issues when employers open their doors to pets. These cases range from American Disability Act ("ADA") accommodation to liability for dog bites.

An important issue for businesses when deciding whether

to permit pets is the issue of liability for dog bites. While a dog owner would, in most cases, be liable if the dog were to bite someone, there is also a possibility the employer would be jointly liable in a personal injury lawsuit. Two cases in Connecticut addressed an employer's potential for liability under the strict liability statute for an "owner" or "keeper" of a dog and found that allowing an employee to bring a dog to work does not make the employer a keeper of the dog. (*LaVoy v. Rosenthal, et al.*, 1999 Conn. Super. LEXIS 3250; *Falby v. Zaremski*, 221 Conn. 14, 19, 602 A.2d 1 (1992)). However, the courts concluded that a plaintiff could bring a claim for negligence against the employer for a dog bite occurring at the workplace.

One solution to the issue is to require employees to provide insurance covering any damage or injury by the dog. Many policies may have a business-pursuit policy exception that may result in the insurance company refusing coverage, in which a plaintiff would seek to recover against the employer. In a case in California, two insurance companies were involved in a lawsuit addressing one company's request for contribution based on the legal right to defend a lawsuit. In this case, Philadelphia Indemnity Insurance Company sought contribution against Fire Insurance Exchange for costs incurred in a personal injury lawsuit involving a dog bite in the workplace. Under the Fire Insurance Exchange policy there was an exception for injuries arising from the individual's work or occurring during the course of her work. In this case, a marriage and family therapist brought her dog to work when she was unable to leave it at home, and the dog bit a patient during a session. The court found that the incident arose from the pursuit of business, and it was excluded under the policy exclusion. Therefore, it is important to require that an employee have insurance coverage and to review the policy for any exceptions pertaining to the workplace. When in doubt, do not permit the employee to bring a pet to work or look into the costs of obtaining a business policy that would cover such instances.

There have also been ADA cases involving pets in the workplace. While the courts have not yet found an employer liable for issues associated with allowing or prohibiting pets, this is an area to be aware of when considering a pet policy. In one case, *Calhoun v. Foodarama*, a New Jersey mailroom employee of Foodarama Supermarkets told her supervisor, who frequently brought cats to the office, she suffered from a fear of cats or ailurophobia. In response to her complaints, the supervisor instructed her to stay in the mailroom to avoid encounters with the cats. The employee missed a week of work, claiming it was due to the fear of the supervisor's cats and was terminated shortly thereafter. The employee filed an

EEOC complaint stating the company discriminated against her on the basis of her disability and refused to accommodate her. The employee failed to file her complaint in time; therefore, the judge did not have to decide whether ailurophobia was a legitimate disability recognized under the ADA but did indicate such contention would be “tenuous at best.”

There have been other ADA lawsuits involving an employee’s right to bring a dog to work relating to an accommodation for stress and/or anxiety. The decisions in the cases demonstrate that the courts are reluctant to open up this possible floodgate. In *Edwards v. United States EPA*, the District Court for the District of Columbia held that there was no objective evidence that allowing an employee to bring his untrained puppy to work would have decreased his anxiety and allowed him to perform better. The court cited a case dealing with a no-pet policy in a housing complex with the position that while “dogs possess the ability to give unconditional love, which simply makes people feel better” this idea “permits no identifiable stopping point: every person with a handicap or illness that caused or brought about feelings of depression, anxiety or low self esteem would be entitled to the dog of their choice, without regard to individual training or ability. And if certain people liked cats, fish, reptiles or birds better than dogs, there would be no logical reason to deny an accommodation for these animals.” Therefore, it is unlikely that other than service dogs, an employee can justify bringing a pet to work under the ADA.

While these cases illustrate the courts reluctance to find liability under strict liability statutes or under ADA accommodation laws, an employer should still take into account the cost and expense in having to defend such suits when deciding whether to permit pets in the office.

Should Your Company Allow Pets?

Whether or not to allow dogs or other pets in the office is a business decision. Businesses, such as food or hospital settings, should not allow pets for sanitary reasons, but for the majority of businesses the answer to this question isn’t as clear. Typically, a decision to allow pets should be decided from the inception of the company, making it part of the work culture. If the pet policy is changed, it works best in small to medium-sized businesses with fewer employees and personalities involved.

Steps to Take When Allowing Pets in the Workplace

The failure to create a comprehensive policy for pets and enforce the policy could lead to serious issues among your employees and/or clients that could expose your business to legal ramifications. If a pet bites a coworker, you may be liable. If an employee has allergies, the business will need to address it before creating a pet friendly workplace. Therefore, it is essential to create a realistic pet policy that fits your specific workplace.

First, a business should survey its employees to assess overall opinions on having pets in the office. The questions should inquire into potential allergies as well. While a company may be able to rearrange employees to keep distance from other coworkers’ pets, this may not be feasible.

When permitting pets, an employer should:

- Require the owner be in complete control of the animal at all times,
- Require employees to bring documentation showing the pet is up to date on its vaccinations,
- Require owners have comprehensive liability insurance covering all injuries,
- Expect employees to sign an indemnification agreement to pay the cost of defending any lawsuit relating to a dog-bite, and
- Require owners to have a way to transport the animal in the event it creates a problem at the office.

Any pet brought to the office must be well behaved and not aggressive. An employer cannot allow pets that are not housebroken or bark excessively. A business should consider a no-tolerance or a three-strike policy that prohibits dogs that break the policy.

Additionally, if the premises are being leased, a company must check with its property owner prior to allowing dogs in the workplace. Ensure you check the lease to determine whether this is covered, but when in doubt ask for written permission.

Opening your office doors to pets is a minimal way to keep employees happy and ideally more productive. If you decide to do so, create a comprehensive pet-policy that fits your

(Continued to next page)

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company and fosters a safe and happy environment for all employees. A company should also consider contacting an attorney before allowing any pets in the workplace to address potential liability and create an appropriate policy.

What is Take Your Dog to Work Day?

TYDTWDay originated in 1996 in the United Kingdom before coming to the United States on June 24, 1999. The event was created by Pet Sitters International. It is estimated that more than 10,000 companies participate in the event each year. The purpose of the event is to celebrate our furry friends and work to raise funds for local shelters. The day exposes employees to the companionship that exists between people and their dogs to raise awareness about the importance of adopting unwanted dogs from local rescues and shelters. This event provides a great opportunity for a business to test whether dogs are good fit for the workplace, as well as specific dog policies.

If your company is interested in participating in TYDTWDay, you should visit www.takeyourdog.com.

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