

Intern + Output = Paycheck

By Shayna Balch

(Labor Letter, January 2012)

It's no secret that today's economy is tough. The result? Business vets are joining this year's crop of students as fall interns. They will work away – often for free – in hopes of a future job, a resumé builder and even to sample "the real world."

There is just one problem – in many cases, this is illegal. Just last year the Labor Department issued a very specific crackdown regarding unpaid employees – a six-point checklist on just how far an internship can go before requiring a business to pay up by at least offering minimum wage. The six criteria a business *must meet* in order to allow unpaid internships are:

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 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 an internship does not meet all of the above areas, the "intern" needs to be paid at least minimum wage as well as overtime as appropriate. In addition, a true internship should always be offered for a specific, defined time frame – and should never promise potential future work.

In the past, this hope for future work has kept interns from complaining of no pay – and kept employers from getting what amounts to free labor. This is not the case any longer. Since the release of the internship criteria, the DOL has cracked down on what qualifies as employment versus as internship in the strictest of senses.

What can really happen to a business caught not paying its interns? You'll face legal exposure both from the government and a potential lawsuit. Penalties can include owing back pay, taxes not withheld, Social Security, unemployment benefits, interest, attorneys' fees and liquidated damages (double the unpaid wages).

For more information contact the author at sbalch@laborlawyers.com or (602) 281-3400.

This article also appeared in the August 2011 issue of *Valley of the Sun HR Newsletter*.