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Who Knew Summer Interns Could Be So Risky?

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What Employers Can Do To Ensure Unpaid Internships Comply With the Law

Summer is quickly approaching, and with it, the **summer intern season**. Every year, thousands of American businesses welcome untold numbers of summer interns into their ranks. Some companies utilize interns year-round. Many of these interns – both during the summer and at other times of the year – are unpaid, perfectly willing to work without compensation for the chance to gain valuable experience and resume-building opportunities.

These unpaid internships, however, present serious risks to employers, even where the intern agrees at the outset to work with no compensation. Recently, several high-profile lawsuits have been filed by former interns, seeking to recover unpaid wages and overtime. PBS talk show host Charlie Rose, for example, was sued in a class action on March 14, 2012, by a former intern who claimed Rose and his production company violated state law by failing to pay her and other interns the minimum wage. Similar lawsuits are pending against Fox Searchlight Pictures (brought by interns who worked on the set of the movie "Black Swan") and Hearst Corp. (brought by an intern who worked for Harpers Bazaar magazine).

So what can employers do to avoid these sorts of disputes and ensure they are in compliance with the law? First, employers should be mindful that the **U.S. Department of Labor (DOL) is highly skeptical of unpaid internships in the for-profit sector**. However, for those employers who do want to offer such internships, the DOL has set forth specific criteria that the internship program generally should satisfy in order for it to be unpaid:

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 time spent in the internship.

Although a determination of whether an internship may be unpaid will focus on all the facts and circumstances of the program, the DOL states that in general, if all six of these factors are met, then the intern need not be paid. However, if one of the factors is not met, then there is chance the intern may qualify as an "employee" entitled to the minimum wage for all hours worked and overtime for all hours over 40 in a workweek. Thus, for example, if an intern is performing productive work for the employer, or the employer uses the intern in place of regular employees or to augment its existing workforce during specific time periods (such as during a seasonal peak), then the intern would likely need to be paid for his or her time.

Of course, paid internships will comply with wage-hour laws if the interns are paid at least the minimum wage for all hours worked (currently \$7.40 per hour in Michigan), and overtime at time-and-a-half their regular rate of pay for all hours worked over 40 in a workweek.

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Employers who intend to offer unpaid internships should consider consulting with legal counsel to ensure that their program is in full compliance with the wage-hour laws, particularly if they are a for-profit company.

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