

Summer Interns: Bargain or Hidden Liability?

By Brigid Heid

Most of us are familiar with the concept of an unpaid summer intern, but in today's tough economy, it is not unheard of for recent graduates or unemployed workers to offer their services just to get their foot in the door, gain experience, or pad their résumé. Before your business brings on an intern, you should know that interns in the for-profit sector are most often viewed as employees, unless a specific 6-part "trainee" test mandated by the Fair Labor Standards Act (FLSA) is met:

1. The internship, even if it includes actual operation of the facilities of the employer, is similar to training in an educational environment;
2. The internship 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 intern understand the intern is not entitled to wages.

Generally, an internship program that is structured around a classroom or academic experience, for example, with school credit and school oversight, is less likely to be viewed as a "trial" job. If it were deemed to be a job, this would result in an obligation to pay wages.

Interns should be supervised, rather than left to work on their own, and the internship should be first and foremost for the benefit of the intern, rather than a cost-saving worker for the company.

Unless your internship meets all 6 criteria, your "intern" is probably an employee. Besides the minimum-wage and possible overtime obligations, other laws such as those that govern discrimination, workers' compensation, the withholding of taxes, and payment of benefits, are implicated by an improper classification. To better understand your rights in hiring unpaid interns, please contact Brigid Heid or your CPM attorney.