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Sports & Entertainment Beat

Tips On Making Unpaid Internships Work

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Lawsuits by unpaid interns have become as trendy as kale salad and Taylor Swift's bangs, particularly in the broadcast and entertainment industries. For instance, Clear Channel Media and Entertainment (now iHeartMedia, Inc.), Fox Entertainment Group, Inc., Hearst Corporation, NBCUniversal, Inc., and International Creative Management Partners, LLC have all been hit with lawsuits by former unpaid interns claiming they were not paid minimum wage in violation of the Fair Labor Standards Act ("FLSA"). While unpaid internships in the coveted entertainment industry have long been popular among high school, college and graduate students as a means to gain valuable experience and "build" one's resumé, the increasing volume of unpaid wage claims may make companies reluctant to use unpaid interns, perceiving them as a risk not worth taking. However, that view might be short-sighted, because interns may be key to the future of a company. If an internship is structured properly, both parties (the student and the company) can benefit, although the employer company may not receive an immediate advantage from the internship. Companies often benefit from the energy and new and creative ideas of student interns and derive intangible satisfaction from helping to train the next generation of entertainment industry professionals. Similarly, interns who complete the internship with a positive experience "spread the word" about the company's virtues to other students, friends, family members and colleagues they encounter wherever they end up in their careers.

The simplest way to avoid any FLSA issues is to establish an internship program that pays the employee minimum wage and complies with all applicable local, state and federal regulations. According to a 2013 survey, 38.1% of internships occurred in the for-profit private sector; the vast majority (72.9%) of these were paid internships.

However, if a company's budget cannot accommodate a paid position, it does not mean it has to abandon the internship program. Here are some tips if a company desires to host an unpaid internship:

- Develop a formal internship plan.
- Make sure that plan complies with local, state and federal regulations.
- The company and the intern must clearly understand that the intern will not be paid. Get this in writing. Develop agreements for interns to sign at the outset that clarify their classification.
- If unpaid, do not view the intern as an employee and do not treat him/her like one.
- Train regular company employees on how to treat interns.

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- Follow the six guidelines used by the Department of Labor ("DOL") to test whether a company's use of unpaid interns complies with the FLSA:
- The internship must be similar to training the student would receive in an educational environment.
- The internship should target on providing the student with skills that can be used within the industry and not that are specific to a particular company.
- The internship experience must be planned to provide the primary benefit to the intern rather than the company.
- Do not ask an intern to perform routine filing, data entry, coffee gathering or other clerical tasks. Tasks should be substantive.
- The intern cannot replace regular employees. Do not use an intern in the place of someone who would be hired as a regular employee.
- The company must derive no immediate advantage for any activities of the intern, and in fact might have its operations impeded. For instance, company staff may have to spend more time to supervise and train the intern.
- The intern should not automatically be assured of a job at the company when the internship ends.
- Follow any requirements of a participating school that provides credit for internship activity. The more the program is structured to provide education, the more it will be viewed as providing scholastic credit in lieu of monetary compensation.

With a little planning, companies can set up unpaid internship programs that comply with FLSA guidelines and avoid lawsuits. Failure to follow DOL's guidelines and develop a fully compliant, thoughtful program can lead to serious financial consequences to a company. For instance, the company could have to pay back wages, back overtime, back benefits, and face negative publicity and increased scrutiny for being a "bad" intern employer.

A final reminder – interns in certain jurisdictions (*e.g.*, New York City, Washington, D.C., and Oregon) are entitled to the same workplace protections against discrimination and harassment as employees.

In sum, while you might want to employ your boss' nephew as an intern this summer, bear in mind that the time has passed when interns could be viewed as "free labor." Careful planning will minimize the risks associated with having that nephew join the company for a few months.

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