Dinse knapp wcandrew

Paid "Internships"

- For employment law purposes, student workers are treated like other part-time employees
- Follow minimum wage, I-9 and other employment-related laws and regulations
- Assume that all employment laws apply
- Should consider whether prudent or necessary to apply your customary hiring, employment practices



Qualified Unpaid Internships

- Primary issue: Are they "employees" under Fair Labor Standards Act and Vermont wage & hour laws?
- If so, standard minimum wage rules apply
- If not, they do not need to be paid at all



Qualified Unpaid Internships

Long-standing federal Department of Labor Test. Not "'employee' if working for own advantage on premises of another." To be unpaid "non-employee" internship, all six of the following factors must be met:

- 1. The training is similar to what would be given in a vocational school or academic educational instruction;
- 2. The training is for the benefit of the trainees or students;

Qualified Unpaid Internships

- 3. The trainees or students do not displace regular employees, but work under their close observation;
- 4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;



Qualified Unpaid Internships

- 5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
- 6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Dinse knapp wcandrew

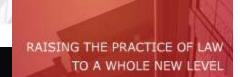
Case studies - DOL Opinion Letters

- Correct answers are:
 - A- Qualified unpaid internship (no employment relationship)
 - B- Not qualified unpaid internship (regular employment relationship)
 - C- Need more information to answer question

Case Studies – DOL Opinion Letters

1994 Opinion Letter:

- Hostel Management Training Course graduates would assist in daily operations of hostels, check guests in and out, perform maintenance and administrative work, be involved in educational/interpretive programming for guests, report to manager of hostel.
- Graduates get room & board at hostel in exchange for 25 hours/week of work (important for graduates to get feel for real life of hosteller). Lasts only 1-2 months.
- No college credit.



Case Studies – DOL Opinion Letters

2004 Opinion Letter

- Primarily marketing/communications majors would distribute a company's stickers and flyers on campus, add information about company's product to chat rooms and web sites, collect data on campus population and other students' reactions to electronic and in-person promotional activities, and survey 50 people on campus.
- Students work with faculty advisor, there is a syllabus, and they receive college credit.



Case Studies – DOL Opinion Letters

1995 Opinion Letter

- College students who are physical fitness instruction/exercise physiology majors would do internships in health/fitness setting (e.g., YMCA, health clubs).
- Receive college credit, required to participate to receive degree.
- Receive stipend



Case Studies – DOL Opinion Letters

2006 Opinion Letter

- University provides one-week externship program to expose students to various career choices, in which students "shadow" an employee at sponsoring employer.
- Sponsoring employer designs program to help student learn about the job.
- Students perform some small office tasks and project-related work.
- No compensation or college credit.
- Employers do use experience to screen interns as potential employees, but no job guarantees.

Practical Application of Factors

- 1. The training is similar to what would be given in a vocational school or academic educational instruction;
- 2. The training is for the benefit of the trainees or students;
- 3. The trainees or students do not displace regular employees, but work under their close observation;
- 4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;
- 5. The trainees or students are not necessarily entitled to a
 job at the conclusion of the training period; and
- 6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Applicability of Other Laws

- If no employment relationship present under detailed DOL / FLSA test, fair to assume that withholding and FICA/FUTA-type tax obligations do not apply under common law test used for tax purposes
- Unemployment compensation: "Employment" does not include service performed by individual under 22 who is enrolled at college/university where service is part of educational activities and student receives academic credit
- Workers' compensation: statutory definitions ambiguous, but per DOL informal opinion, if bona fide unpaid internship, receiving credit, probably do not have to cover (but employer may want to to get exclusivity benefit)
- To be most prudent, assume that prohibitions against hostile work environment harassment, discrimination will apply, by means of employment and/or public accommodation laws

Questions?

Jeff Nolan - <u>inolan@dinse.com</u>

(802) 864-5751

