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
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.
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
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.
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.
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
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

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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?

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