

Wouldn't it be Great to Have an Intern do This? Answer: Maybe

March 12, 2013

The aphorism that ‘people go to work for the love of their work and for the money’ is overlooked in part by employers using interns to accomplish real work. A recent class and collective action case filed in federal court in NY by a former unpaid intern of the Elite Model Management Corporation “seeking at least \$50 million for unpaid wages, overtime and benefits” should remind us of the money part. It is also a wake up call for educational and other training institutions placing interns, and for businesses using them, that there are no bright line rules for whether a particular unpaid internship comports with the FLSA. As a result, unpaid interns are increasingly filing wage and hour claims.

The US Department of Labor Wage and Hour Division (WHD) issued a fact sheet detailing six criteria, all of which must be met, for a valid unpaid internship:

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 that provides the training 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 the time spent in the internship.

The fact sheet goes on to list other factors that may be considered, including whether the internship is similar to an educational environment with the intern being the primary beneficiary, and whether the internship is of a fixed duration. Also, although an intern may, with close supervision (e.g., job shadowing) perform some of the functions of the workplace, the fact sheet emphasizes that, “If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods, these interns should be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.”

In light of these guidelines, companies considering an internship program should proceed with care.