



Beware the Lure of the “Free” Summer Intern

By: Victor O. Cardwell and Bayard Harris

As summer approaches and the lure of all of these fresh young faces appear at your doorstep with an offer that sounds too good to be true: “I will work for free!” Beware, as the old saying goes; “there is no such thing as a free lunch,” or in this case a free intern.

The Wage and Hour Division, in its enforcement of the Fair Labor Standards Act (“FLSA”), has recently issued a new Fact Sheet #71, <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>, that sets forth the strict requirements that must be met in order for you to actually utilize an “intern” in your organization. There are six (6) criteria that must be met in order for an intern to fall outside of the employee relationship in the private sector:

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.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act’s minimum wage and overtime provisions do not apply to the intern.

Again, beware, in the Wage and Hour Divisions own words: “This exclusion from the definition of employment is necessarily quite narrow because the FLSA’s definition of “employ” is very broad.”

Before you utilize that intern you should look for an association with an institution of higher learning. It is fair to say, however, that most unpaid interns in the private sector may not meet the DOL’s narrow exclusion.

Some danger signs to look out for would include:

- Is the intern eligible to receive academic credit for his or her time with your company?
- Has the intern taken the place of a “regular worker”?
- Does the intern expect that his or her association with your company could lead to future employment?

The Wage and Hour Division is spreading its influence and every employer should be extra vigilant in complying with the requirements of the FLSA. It is becoming crystal clear that this law that applies to almost every employer and is easier to violate than to be in total compliance is going to be the “tip of the spear” for this agency’s increased enforcement efforts. Don’t you be the one getting stuck.

If you would like to discuss the FLSA and some of its possible pitfalls, which are many, call on us at any time.

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