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## No pay, not no rules

### Compliance tips for unpaid internship programs

By Kathleen Koster

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In this economy, it may seem like a good idea to hire an unpaid intern to reduce personnel costs, but employers should think twice before replacing their full-time workers with unpaid staff.

Maintaining compliance with Department of Labor requirements can be difficult and closely mentoring participants, as regulations mandate, can take time and money.

"If employers try to get free labor from unsuspecting interns, they could be scrutinized by the DOL and demanded to pay back wages," warns Joel Rice, a partner with Atlanta-based Fisher & Phillips LLC. DOL has a six-prong test to measure a company's intern program compliance. Among the specific questions that HR/benefits managers should be asking in determining whether their internship program is on the right side of the law:

1. Is the intern training similar to that which would have been given at a vocational school?

The internship should be for the benefit of the industry newcomer, not the employer. Though an employer can profit from the fruits of their labor, the program's primary purpose must be to supplement education.

For this reason, experts recommend aligning your program with a university and requiring an accompanying class to bolster the legitimacy of your offering, though it is not a guarantee against DOL auditing.

"The critical factor is that [the internship] needs to be a logical extension of an academic program. The intern can get practical experience, but the employer cannot be the primary beneficiary," says Jay Zweig, a partner with Bryan Cave.

2. Is the training primarily for the benefit of the intern?

Although including a one-on-one mentoring relationship in an internship program takes time and effort, the effort will make the mentors improved professionals, Rice believes.

He suggests providing regular education at luncheon seminars where interns can learn more about the

industry.

3. Does the intern replace regular employees?

"[DOL] doesn't want you getting free labor out of this person; that's not the goal of an internship," Rice says. "So, if you fire somebody you were paying and substitute them with an intern, that suggests that you're using the internship to save money. That's what would potentially lead you afool of regulations."

4. Does the company directly benefit from the intern's performance?

Paul Furiga, CEO and founder of WordWrite, a PR firm outside of Pittsburgh, found a way to save money for his three-person team while ensuring that the eight interns he's employed take away a full understanding of the profession.

"Coming into this environment – a smaller business—has been a lot more beneficial to me than working at a larger agency would have been because they have given me more responsibility, especially as time has gone on, and their faith in me has grown. I have been able to do things I normally wouldn't have been allowed to do at other companies," reflects Sam Wannemacher, the firm's current intern, who will be hired full-time this summer.

WordWrite pays a \$2,000 stipend for the semester to set them apart from other companies and to attract more diverse talent.

According to Furiga: "For a small business, an intern is not only a good way to get an extra brain and an extra pair of arms and legs, but also a great way to get someone who is young, enthusiastic and energetic, and will help grow your workforce."

5. Do the company and intern understand the full conditions of the internship?

Assigning an unpaid intern to do "scut" work, such as making copies, deliveries or fetching coffee, violates the federal Fair Labor Standards Act. However, clerical work can be legitimately assigned to paid interns.

Employers should sign and having interns sign a written agreement that says whether the internship is paid and what it will entail.

6. Is the intern entitled to a job at the end of the program?

The answer to this question should be no, but that doesn't mean the employer can't use the internship as a recruiting device.

It may help employers to view the process as an extended interview. Though managers cannot promise interns that they will receive a paying job after the term is complete, employers can suggest that this is a strong possibility, an opportunity that perks up the ears of many a college student when recruiting from universities, says Zweig.

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