

# Your BUSINESS

Spring/Summer 2019 • New Jersey



216 E. Broadway, P.O. Box 557 • Salem, NJ 08079-0557  
(856) 935-0845 • (856) 935-4223 FAX  
[www.hdyoung.com](http://www.hdyoung.com) • [insure@hdyoung.com](mailto:insure@hdyoung.com)



## Legal obligations when hiring summer interns

Internships in the for-profit sector often will be viewed as employment. Covered and nonexempt individuals who are employed to work must be compensated for the services they perform for an employer, which includes minimum wages and overtime pay under the federal Fair Labor Standard Act. Courts have used the primary beneficiary test to determine whether an intern or student is, in fact, an employee under the FLSA. The following factors of this test are important to consider:

1. The understanding between the employer and intern that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The similarity of the internship training to what may be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The internship accommodates the intern's academic commitments by corresponding to the academic calendar.

5. The internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The intern's work complements—rather than displaces—the work of paid employees while providing significant educational benefits to the intern.
7. The intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

If conclusions for all of the above factors lean in the right direction, an employment relationship does not exist under the FLSA, and the act's minimum wage and overtime provisions do not apply to the intern. As you can see, this exclusion from the definition of employment is quite narrow. For additional information, see Fact Sheet No. 71: Internship Programs Under The Fair Labor Standards Act, distributed by the U.S. Department of Labor Wage and Hour Division.

If a summer intern is paid, then that intern is an employee and must be covered under your workers' compensation insurance, which means you will pay premium for that payroll. If you decide that the intern qualifies under the FLSA exemption and is

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not paid, you still may have to provide him or her with workers' compensation insurance. Employment is contingent upon financial consideration, which has been interpreted by New Jersey courts as including anything of value received for a person's services. The issue is not how much remuneration is enough to convert a volunteer to an employee. Rather, employee status for workers' compensation purposes exists if any financial consideration is part of the bargain.

Hiring an intern? We can help you make sure you're following all the necessary legal obligations.



## Help your employees return to work sooner

According to a study conducted by the Disability Management Employer Coalition and Lincoln Financial Group, employees who are out of work for more than a month have a less than 20 percent chance of returning to their job. However, the same survey found that employees are more likely to return to the same company if they wait for less than a month to do so, and their supervisors are communicative with them. Translation: Employees tend to stay out of work longer if they think their employers don't care about them.

In addition to returning your workforce as quickly as possible, when employees return to the workplace (safely and efficiently) your company can save money on its disability payments.

To help your injured or sick employees return to work as soon as possible, remember to keep in contact and make reasonable accommodations.

While the injured or sick employees are out of the office:

Give them a call to check up on their progress.

- Send them a "Get Well Soon" card.
- Let them know the office can make any reasonable accommodations to help them return to work (once they have been cleared to do so by their doctor).

Once the injured or sick employees plan to return to the office:

- Check to see if any modifications need to happen to their work space, duties or hours.

- Make any necessary, reasonable accommodations.
- Check in with the employees to make sure the modifications are beneficial.

Don't forget the value of offering your employees insurance benefits, such as health insurance, long-term disability, workers' compensation, etc., which can help them if they are injured or sick. Not only will these benefits help your current employees, but additional benefits, such as life insurance, will provide value to your company when you are hiring new employees. Give us a call today. We can review your employee insurance benefits and your company's insurance policies to help you make sure you have the coverage you need.







## Avoid pregnancy discrimination

It is becoming more common that women work longer into their pregnancies, which can lead to an increase of discrimination against them. In turn, this can lead to an increase in claims against the employer. Most employers do not realize the protections that are extended to pregnant women.

Pregnant employees are offered protection under at least three different federal laws, each granting a different level of protection, which can start before even being hired.

Under the Pregnancy Discrimination Act, it is unlawful for an employer to refuse to hire a pregnant woman because of its prejudices against pregnant workers. It also is unlawful to refuse to hire a pregnant woman based on the prejudices of co-workers, clients and/or customers.

If a pregnant employee is unable to perform her job, employers are required to treat her the same as they would any

other temporarily disabled employee. This may mean assigning the pregnant employee light duty; modifying her tasks; or allowing disability leave. Similarly, pregnant employees are protected from having to work in adverse conditions.

### **“Pregnant employees are offered protection under at least three different federal laws.”**

If an employer allows for temporarily disabled employees to take disability leave or leave without pay, then they must allow the same to employees who are pregnant. The employer is required to hold open a job for a pregnancy-related absence for the same amount of time as they would for jobs that are held open for non-pregnancy-related sick or temporary disability leave.

Some pregnancy-related impairments may be considered disabilities under the Americans with Disabilities Act. In these circumstances, an employer may have to provide reasonable accommodations for the employee.

Knowing the rules and regulations regarding the rights of pregnant employees is imperative for employers to ensure they do not unintentionally infringe on the rights of the employee. Knowledge is important; but it also is important to plan for the worst in case something does happen. Investing in an Employment Practices Liability Insurance policy to protect your business in the event of an incident is important to ensure that a mistake isn't costly. Do you want to make sure your business has the proper insurance to cover all your employees? Give us a call.



## Business on wheels: food trucks and trailers



A restaurant on wheels is a fantastic combination that brings people great food on the go. However, it also combines two types of insurance: business and auto.

You need to consider the standard insurance coverages for any food business, and then the different types of coverage to protect the truck or trailer.

To be clear, a food truck is an all-in-one kitchen and vehicle. A food trailer is a separate kitchen that is towed by a vehicle. For food trucks, a commercial auto insurance policy will provide liability coverage while on the road, as well as comprehensive and collision for the vehicle. Likewise, food trailers can be scheduled on the commercial auto policy for these coverages. Also, should damage occur to a food truck or trailer by a covered cause of loss, there is now a standard commercial auto endorsement that will help recover the income lost from the suspension of the restaurant operations.

We're not just talking about vehicles here—this is a business too. Inland

marine insurance will cover damage to the contents of your food truck or trailer, ranging from extreme weather to theft. Commercial general liability insurance will cover you against things that occur during the course of business, such as a customer becoming ill after eating your food.

If you have any employees working in the food business with you, depending on your state, you will likely be required to provide workers' compensation insurance as well.

A food truck or food trailer business involves a lot more than just driving around selling food. Luckily, many insurance companies now offer all of the aforementioned insurance options to make things a bit easier. If you have any concerns regarding insuring your food truck or food trailer, give us a call and we can discuss your current policies.

## News from our agency

### Is your business truly protected?

Building a business is hard. As a business owner, the day-to-day operations will do more than keep you busy. At the end of the day, you may be wondering whether you have the correct insurance coverages and limits. This will only add to your stress level.

That's where we come in. Insurance for your business is our business. You may require unique insurance policies beyond those that are normally purchased to make sure your business can continue to run smoothly at all times. We can help you examine your particular business risks and suggest insurance coverages you might not have considered.

You may have general liability, commercial auto and property policies; but, have you considered professional liability, crime, cyberliability, employment practices liability or business interruption insurance? Those are just a few of the insurance options that you may be unaware of.

We can be reached at (856) 935-0845 or by visiting our website at [www.hdyoung.com](http://www.hdyoung.com). You also can find us on Facebook. Give our agency a call today, so you can sleep better tonight.

