

HR Weekly Podcast
July 16, 2014

Today is July 16, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's Podcast deals with issues surrounding the hiring of interns.

Students have long found internships to be a way of gaining valuable work experience. Interns have traditionally been an attractive option for employers to gain inexpensive or free temporary labor. An article in the May 2014 issue of the Phoenix Business Journal cautions about potential pitfalls when using interns to substitute your traditional workforce with low and non-paid workers.

Recently there have been several high-profile cases in which individuals classified as interns have brought claims alleging they were improperly paid. Both the United States Department of Labor, or USDOL, and plaintiff's attorneys have been aggressively pursuing cases where employees are improperly treated as exempt interns.

In the case of *Fox Searchlight Pictures v. Glatt*, the Southern District of New York ruled in June of 2013 that unpaid interns working on the production of the movie, *Black Swan*, were in fact employees and should have been paid at least the minimum wage for their work. Applying USDOL criteria, the court said the interns did not receive training similar to that in an educational environment, as they performed routine tasks that otherwise would have been performed by paid employees. The court also held that Fox Searchlight was the "primary" beneficiary of the internships. Although the plaintiffs Eric Glatt and Alexander Footman, understood that their internships would be unpaid, the court pointed out that the Fair Labor Standards Act, or FLSA, "does not allow employees to waive their entitlement to wages." "Considering the totality of the circumstances, Glatt and Footman were classified improperly as unpaid interns and are 'employees' covered by the FLSA and New York Labor Law," the court ruled. "They worked as paid employees work, providing an immediate advantage to their employer and performing low-level tasks not requiring specialized training."

When considering hiring unpaid interns, managers and human resources professionals should ensure that **all** of the following conditions are met:

1. The internship, even though it includes actual operations 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 the 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 impaired,
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.

According to guidance from the USDOL, if **all** of the six criteria above are not met, then the intern must be paid at least the minimum wage and for any overtime due to the intern. Therefore, it is recommended that employers carefully consider whether the criteria have been met before classifying individuals as unpaid interns. In addition, if employers plan on hiring paid interns, they should ensure that the pay for interns is consistent with wage and hour laws.

If you have questions about this topic, please contact your HR Consultant at 803-896-5300. Thank you.