Managing Internships
Paid and Unpaid

Summary
In 2010, the Department of Labor clearly defined the criteria of an unpaid internship under the Fair Labor Standards Act (FLSA), ensuring employers do not use unpaid interns as free labor. Consequently, a few well-publicized lawsuits by unpaid interns against employers have caused organizations to reevaluate their internship programs. This white paper takes a closer look at managing the unpaid and paid internship, including examining the FLSA’s six criteria for unpaid internships, deciding whether an internship will be paid or unpaid, and addressing the compliance issues associated with paid internships: recordkeeping, overtime, and if applicable, the employment of minors.
Reevaluating the Internship

This summer employers expect to offer fewer unpaid internships to eliminate the risk of labor lawsuits. According to an article in USA Today, unpaid internships increased during and following the recession as employers, facing tighter budgets, replaced entry-level employees with student interns. This trend caused the U.S. Department of Labor’s Wage and Hour Division to define six specific criteria an internship must meet to qualify as unpaid under the Fair Labor Standards Act (FLSA). Thanks in part to a highly publicized lawsuit filed by an unpaid intern at Harper’s Bazaar, owned by Hearst Corporation, employers are reevaluating their unpaid internship programs, either converting them to paid internships or doing away with the program altogether.

The Six Criteria of Unpaid Internships

Under the FLSA, an internship must meet six criteria to qualify as unpaid:

1. *The internship is similar to training received in an educational environment.* Even though it includes the operation of an employer’s facilities, internships designed around a classroom or academic experience (especially in cases where an academic institution oversees the internship) providing general skills translatable to other employers are more likely justified as unpaid internships.

2. *The experience is for the benefit of the intern.* An unpaid intern cannot routinely perform business activities, especially if these activities are ones typically performed by a paid employee.

3. *The intern is not a substitute for regular employees and works under close supervision of existing staff.* Interns who shadow employees and do not engage in regular work are more likely to qualify as unpaid. Interns doing work that regular employees perform (and receiving the same level of supervision) are seen as employees and entitled to compensation under FLSA.

4. *The employer derives no immediate advantage from the intern’s activities.* An employer cannot become dependent on an unpaid intern’s activities as this suggests an employment relationship has been established.

5. *The intern isn’t guaranteed a job at the conclusion of the internship.* If the expectation that an employment offer will follow the conclusion of an unpaid internship, the internship can be viewed as a trial period and the unpaid intern as an employee under FLSA.

6. *Both the employer and the intern understand that the intern is not entitled to pay for the time spent in the internship.* The internship’s duration or end date also needs to be set prior to the beginning of the internship.

Currently, the FLSA make exceptions for individuals that volunteer at a state or local government agency or for humanitarian, charitable or civic purposes at non-profit organizations.
To Pay or Not to Pay

If an internship does not meet the six criteria above or qualify as an exception, the internship likely establishes an employment relationship. This means the intern will be viewed as an employee under FLSA, guaranteeing him or her at least minimum wage. This also means all FLSA provisions that apply to employees also apply to the paid intern, regardless of the length of the internship.

Managing Paid Internships

Organizations with paid internship programs need to proactively manage three important FLSA-regulated activities: recordkeeping, overtime and, if applicable, employment of minors.

Recordkeeping

Under FLSA recordkeeping standards, employers are required to keep accurate personal information on file for FLSA-covered, non-exempt workers, including:

- Name
- Social Security Number
- Address
- Birthday (if under the age of 19)
- Sex
- Occupation
- Time and day the employee’s workweek begins
- Hours worked each day
- Regularly hourly pay rate
- Total hours worked per workweek
- How the employee’s wages are determined (per hour, week, project, etc.)
- Total daily/weekly straight-time earnings
- Total overtime earnings per workweek
- All additions to or deductions from the employee’s wages
- Total wages paid per pay period
- Date of wage payment and pay period covered

An intern’s personal information is likely captured during the application process, but employers need to input that data into their recordkeeping system along with FLSA-mandated work schedule and pay rate information. Employers with returning interns need to update the intern’s personal information (if it has changed) in the system to ensure FLSA compliance.

Overtime

Overtime is defined by the FLSA as time worked beyond 40 hours per workweek. FLSA stipulates that employees working overtime (in jobs or industries not exempt from overtime regulations) will be compensated at least 1.5 times the employee’s weighted average hourly rate. Because an employer can define when an employee’s workweek begins and ends, employers do not need to pay overtime for hours worked on Saturday, Sunday or holidays if the hours fall within an employee’s regular 40-hour workweek.

Calculating overtime can be an error-prone process if a paid intern works at two different pay rates. FLSA requires that “time and a half” calculations reflect a weighted average of the intern’s (or employee’s) rate of pay. Overtime compensa-
tion must also be paid at the same time as regular pay for the pay period in which overtime was earned.

Overtime compensation is a requirement under FLSA. If an employer requires up-front overtime approval but an intern works overtime without necessary approval, FLSA requires employers to compensate them. Employers need to clearly state overtime policies and expectations to interns and ensure supervisors actively oversee interns’ hours and schedules.

Often, instead of submitting overtime hours for compensation, casual agreements for “comp time” take place where an intern seeks his or her supervisor’s approval to leave early or unofficially take time off. FLSA states employees must be paid for all hours worked, making comp time a non-compliant activity.

**Employment of Minors**

The FLSA has specific regulations and restrictions surrounding the hours and activities that can be performed by underage employees in the workplace. If an employer’s internship program is open to minors, the employer needs to review relevant stipulations for their industry and make sure their organization is in compliance.

**Paid Internship Management Checklist**

| Record personal information. Add new interns’ personal data to employee records and update the personal information of returning interns. A time and attendance system configured for seasonal help streamlines the recordkeeping process. |
| Automate overtime with a system that integrates time and attendance information with payroll data to ensure overtime calculations are made correctly and overtime pay is paid during the appropriate pay period. |
| Review overtime procedures and policies with interns and their supervisors prior to the start of the internship. |
| Discourage comp time by requiring interns to record all hours they spend performing job-related tasks. |
| Double-check all child labor regulations are met if the paid intern is considered underage. |

**Conclusion**

Internships offer students and career-switchers great opportunities to gain experience in their chosen field. They can also benefit employers if employers are clear on what their internship program will offer. If employers propose an unpaid internship, they must ensure their program meets the FLSA’s six criteria to avoid a potential lawsuit. Managing a paid internship program means meeting FLSA’s compliance obligations regarding recordkeeping, overtime and, if applicable, the employment of minors, so that both the intern and the employer find their experience working together beneficial.
Managing Internships

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About Attendance on Demand, Inc.

Attendance on Demand supports the labor management needs of thousands of companies and more than a half million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company’s risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating recordkeeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision-making.

References

3 Ibid.