

## PITFALLS OF USING INTERNS

Recently businesses have been increasing the use of interns in interns. Although this age old practice maybe beneficial to both employers and interns, and many colleges have programs which allow their students to work and receive course credit at the same time, there are strict legal requirements for internship programs. Unpaid internships raise a host of legal issues. Employers need to tread carefully and make sure not to violate labor laws.

The Fair Labor Standards Act applies to most employers. The essential test is whether the training received is predominantly for the benefit of the intern or the employer, because a person cannot be an employee if he or she is serving only his or her own interests. Following this reasoning courts have held that a true intern's training should overall impede the employer's operations more than facilitate those operations.

The Federal Department of Labor has distilled six factors it considers in distinguishing between an intern, and an employee.

1. The training is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainee.
3. The trainee does not displace a regular employee and works under close supervision.
4. The training provider derives no immediate benefit from the trainee; in fact, its operations may be impeded.
5. The trainee is not entitled to a job at the completion of the training.
6. The employer and the trainee understand that the trainee is not entitled to wages; however, a stipend may be permitted.

The Department of Labor and the courts have considered other factors as well. For example, whether the individual is enrolled in school and taking classes concurrently with the working for which the person receives credit; whether the work is required for a degree; and whether there is any school faculty on the employer's staff.

The California Department of Industrial Relations, Division of Labor Standards Enforcement, has taken the position that the employer should follow several additional requirements.

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7. The training should be part of an educational curriculum.
8. The students should not be treated as employees for such purposes as receiving benefits.
9. The training should be general in nature,



so as to qualify the students for work for any employer, rather than designed specifically as preparation for work at the employer offering the program.

10. The screening process for the program should not be the same as for employment.
11. Advertisements for the program should be couched in terms of education rather than employment.

Employers can fall into a real trap in the workers' compensation system if the person is incorrectly categorized and injured at work. If the injured person is an employee, but not reported as such to the workers' compensation carrier, the claim can result in an increased premium. If the injured person is in fact an intern then the injury could result in a tort claim that may or may not be covered by the employer's commercial general liability policy. Employers contemplating internships are advised to check with their carriers. Here are some pitfalls as well as some smart practices:

1. Hiring an intern might decrease productivity: This is because the law requires that the intern be there for educational reasons and not as a "replacement" for anyone who could have been hired. Employers will therefore have to devote time to teaching the intern, in order to be compliant with the law.
2. Have a learning "curriculum" or a game plan: The law states that the internship needs to be largely for the benefit of the intern, as opposed to the benefit of the company. Therefore, before bringing on an intern, design a "curriculum" of things to teach the intern. This helps substantiate the position that the internship is really for the intern's benefit.
3. Don't use the word "hire": "Hire" implies an employer-employee relationship, which means a paid position. Similarly, don't use words like "employee" or "employment" when referring to an intern.
4. Distinguish between interns and employees: Try not to treat interns like employees. Make specific distinctions. Perhaps have special activities reserved just for interns. Or perhaps, special tasks designated just for interns. The intern can't be seen as a replacement for an employee who could have been hired.

[Opinion letter outlining the criteria for unpaid interns](http://www.dir.ca.gov/dlse/opinions/1998-11-12.pdf) (DLSE)

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[FLSA Opinion Letter regarding unpaid interns](http://www.dol.gov/whd/opinion/FLSANA/2004/2004_05_17_05FLSA_NA_internship.htm) (FLSA)

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