

# TAKING ADVANTAGE OF INTERNS: UNPAID INTERNSHIPS

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## ABSTRACT

*Unpaid internships are not illegal, but are more frequently becoming a concern for both the employer and intern. The internship may, however, cross illegal boundaries in some circumstances. In order for an individual to legally receive a fair and beneficial experience as an intern, and an employer to avoid legal issues in the event of an unpaid or paid internship, he or she should both be aware of the guidelines and precautions reviewed in this article.*

## INTRODUCTION

Interestingly it is estimated that there are over 100,000 unpaid internships in the United States (Grundwald, 2011). However, many employers are failing to offer insight/training/experience relevant to the intern's chosen profession and as result, are acting in an illegal manner.

The word, "intern" is defined as "an advanced student or graduate usually in a professional field (as medicine or teaching) gaining supervised practical experience (as in a hospital or classroom)" (*Merriam-Webster Dictionary*, 2011). When an individual holds an internship, he/she is also looking for training that will better prepare him or her for real world work experience. Consider the following example of a typical internship: On the set of a morning show in New York, a career-seeking female held a demanding internship in which she dedicated herself from 5:30am until 11:00pm or 12:00am at night. Great for experience, right? Not necessarily. With a struggling economy, many employers are looking to fill employment gaps with internships, unpaid internships that is. Therefore, employers will often times use interns to replace employees to perform tasks that involve filing, cleaning, ect. The bottom line is, interns are not reaping the benefits of their internships and in many cases, they are doing it illegally (Garton, 2010).

## ADVANTAGES FOR EMPLOYER

While the intern may be at a disadvantage, this strategy by the employer lowers company cost and helps keep productivity up to par. This approach is the ultimate motivation behind employers' actions when it comes to obtaining interns. Employers know that it is hard to find an intern that isn't willing to do his or her very best. After all, student interns have to keep a top notch, career-oriented mind so that they will have better chances at an actual, paid job. So,

unpaid work is not uncommon for interns anymore. In fact, Lance Choy, director of the Career Development Center at Stanford University, has seen the popularity of unpaid internships rise dramatically in the past few years. 643 unpaid internships were posted on Stanford's job board in 2010 as opposed to the 174 posted in 2008 (Greenhouse, 2010). If nothing else, the state of the economy is highly reflected in these numbers and suggests that companies have learned quickly to utilize interns as a way to reduce financial strains. However, in many cases this type of working relationship has deemed to be illegal.

### **GUIDELINES**

In the U.S. Department of Labor's regulations of internships under the Fair Labor Standards Act, the term "employ" is noted as to having a broad definition. Due to this fact, there can often be a gray area when determining whether or not an individual can be considered to be covered or exempt from pay. If an intern working "for-profit" in the private sector meets specific guidelines, then he or she may qualify for compensation. The Wage and Hour Division of the United States issued these guidelines in an effort to make sure interns are not being taken advantage of in the workforce. The criteria helps employers determine if compensation is required for the intern or not, thus concluding if the employer's act will be legal or illegal. The guidelines, found on the United States Department of Labor website, are as follows:

1. "The internship, even though it includes actual operation 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 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 impeded;
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" (U.S. Department of Labor, *Fact Sheet #71*, 2010).

"If the factors above are met, then an employment relationship does not exist," according to the U.S. Wage and Hour Division under the Fair Labor Standards Act (FLSA), (U.S. Department of Labor, *Fact Sheet #71*, 2010, pg. 1). These guidelines apply to "for-profit" private sectors. Therefore, an unpaid internship is determined to be legal under these circumstances.

Other aspects may also surround the legality of internships. Two conditions that may be applied in making determinations are explained in greater detail below:

### **CLASSROOMS/ACADEMYS**

Under the FLSA, the more an internship is "centered around a classroom or academy as opposed to the employer's actual operations, the more likely the activity is training." In a classroom or academy atmosphere, interns typically receive skills and competence that will better prepare them for multiple employment opportunities rather than just one. In this case, the government finds that the intern is legally unpaid because the practice is geared towards a more training-focus (Leppink and Oates, 2010).

### **JOB ENTITLEMENT/WAGES**

The FLSA declares that "Typically, before the work-based training begins, both the employer and the worker agree that the worker is not entitled to a job at the conclusion of the training period or wages for the time spent in training." Normally, if an individual is even hired, he or she is still considered to be an employee rather than a trainee. The FLSA also suggests, "If the worker is

placed with the employer for a trial period with the hope that the worker will then be hired on a permanent basis (even if the worker is not automatically entitled to a job at the end of the period), then the worker is not likely to be a trainee during the trial period” (Leppink and Oates, 2010). Numerous interns go into a position with the expectation of having a job waiting for them upon the completion of the internship. If these are the expectations informed to the intern by the employer, then the intern should be entitled to compensation.

### **EMPLOYER COMPLIANCE**

The Department of Labor recognizes that free labor is becoming more and more of an issue. Accordingly, the government is becoming very pro-active in enforcing strict rules and regulations that comply with the 6 guidelines listed above. In the New York Times article, *The Paid Intern, Legal or Not*, Nancy Leppkin, the acting director for the Wage and Hour Division Department admitted, “If you’re a for-profit employer or you want to pursue an internship with a for-profit employer, there aren’t going to be many circumstances where you can have an internship and not be paid and still be in compliance with the law” (Greenhouse, 2010).

### **EMPLOYER PERSPECTIVE**

From an employer standpoint, in order to avoid legal trouble, two options exist:

1. **Recognize interns as employees.**

Pay these individuals seeking educational experience within their profession if the employer is to benefit from the intern’s work. “Paid internships can help [employers] acquire a specialized skill at a good price - if assistance is needed with marketing or setting up a website but can’t afford a professional, students looking to boost their resume are often a good bet,” (D, Nicole, 2010).

2. **Recognize interns as trainees.**

Provide interns with training and insight only in the parameters of the intern’s profession without compensation.

In order to make sure option 2 is correctly executed, it is best for employer’s to contact the Department of Labor’s Wage and Hour Division. Even if an employer chooses option 1, it is still smart to engage in the Department’s knowledge how to differentiate between a work-based training program and employment. To put it more clearly examples of each option are described below:

1. **Interns as employees**

In an employment type setting, interns play a role in performing certain tasks. For example, an intern who is seeking experience as a Human Resource Manager may be required to call possible applicants in for interviews, answer phone calls, order updated labor law posters, and even help plan or organize an “Employee Appreciation Day.” Because all of these duties are considered advantageous to the employer, then the intern is considered an “employee.”

2. **Interns as trainees**

Interns are regarded as trainees whenever they carry out just the opposite of performing tasks beneficial to the company. For instance, take the same individual who wishes to be a part of the Human Resource Management field. In a different setting, this person listens in on conference calls between the Human Resource Manager and a retirement plan group, sits in on actual interviews, learns how to differentiate bad applications from notable ones, and researches the ways to motivate workers for the personal gain of the intern.

### **PRECAUTIONS FOR THE EMPLOYER**

By offering compensation to its interns, an employer may safely slide by the legal restrictions issued by the Department of Labor. Although, this may not always be the most cost effective method, it is the safest. In addition, employers may “brag” about its internship policies, which will in turn possibly produce a greater number of more highly qualified applicants. (“What To Do”, *Unfair Internships*).

### **INTERN PERSPECTIVE**

A road block, however, does exist: Because students are so apt to finding a job and believe that internships are the way to get them there, minimum reports are filed regarding unfair treatment/compensation even when the individual knows for certain that the internship is illegal under the Fair Labor Standards Act. In addition, students are so careful about their future careers that in interviews concerning illegal unpaid internships, they would not release their names nor the companies they worked for. Employers know this about students and find comfort and no hesitation in hiring interns for little to no compensation. As stated earlier it may happen that under special conditions, an unpaid internship may be declared legal, when and if it complies with the 6 guidelines issued by the Wage and Hour Division, but even then, some individuals cannot afford to spend all their time and effort on a résumé fluffer. Students are looking for the best of both worlds: Educational experience in their chosen profession plus compensation.

In *The Unpaid Internships, Legal or Not* article, Ross Perlin, a Stanford graduate and onetime unpaid intern who is writing a book on the subject stated, “Internships have become the gateway into the white-collar work force... Employers increasingly want experience for entry-level jobs, and many students see the only way to get that is through unpaid internships.” However, students that struggle working for no pay expectedly become less competitive because they do not have the kind experience a paid intern would have, which is the type of experience employers are searching for in the hiring process (Greenhouse, 2010).

More and more disadvantages seem to be finding their way into possible internship opportunities. According to the [Huffington Post](#), “40% fewer job prospects are available for college graduates... and reports are indicating that 16-19 year-olds are being hit hardest by recession,” (Garton, 2010). This age range is the band in which little to no work experience is found among opportunistic, career-seeking individuals. With this in mind, employers do not hire nor give this age group a chance at an internship because employers must also think of ways to fight the recession. Taking time out to train unknowledgable individuals or even paying those who are working under “intern” status is not cost effective for the company. This is why so many employers are looking for ways to derive benefits from unpaid interns, or better known as, underpaid employee replacements. Again, more and more students are accepting these offers due to the 40% drop in job prospects thinking that a chance at an unpaid internship will also equal a chance at a higher paying position one day. Unfortunately, thanks again to the economy, this is not always the case.

On another note, interns may face other dilemmas such as labor law issues. If an intern falls under the “unpaid” status and does not qualify as an employee, then he or she may not file suit for discrepancies such as sexual harrasment or race discrimination against the company because he or she is not protected under federal labor laws.

### **BONA FIDE INTERNSHIP OPPORTUNITIES**

Those seeking legal, unpaid internships should look into the accreditation of a company and the system an employer has integrated for interns. The U.S. Department of Labor issued a Training and Employment Guidance Letter which suggests that “Employers with bona fide training programs typically do not utilize trainees as a substitute for regular workers. If the employer uses

the workers as substitutes for regular workers, it is more likely that the workers are employees as opposed to trainees,” (Leppink and Oates, NO 12-09, 2010). A bona fide training program can be characterized by little to no work and include job shadowing and training. In addition, interns should not be held to the same standards as employees when it comes to work performance. If interns are being as closely supervised as employees, then employment is assumed. Also, if interns are required to work overtime for work not performed by other employees, then this would fall under employment as well. When this is the case, then the intern, under federal law, should be paid for his or her work due to displacement and supervision issues.

### **LEGALITY AWARENESS**

For those who feel like they have been taken advantage of in the intern arena, help is on the way. Federal regulators are cracking down on the legality of paid/unpaid internships. More suits are being filed, and numerous plaintiff’s are winning cases. Bob Estabrook, spokesman for Oregon’s labor department as noted in *The Paid Intern, Legal or Not*, admits that “his department recently handled complaints involving two individuals at a solar panel company who received \$3,350 in back pay after claiming that they were wrongly treated as unpaid interns,” (Greenhouse, 2010). The goal is to make employers aware of the seriousness of the issue which is an easier undertaking when big industries such as Fox Searchlight Pictures have claims filed against them for misuse of interns.

As mentioned in a separate New York Times article, *Interns, Unpaid by a Studio, File Suit*, “Two men who worked on the hit movie ‘Black Swan’ have mounted an unusual challenge to the film industry’s widely accepted practice of unpaid internships by filing a lawsuit on Wednesday [September 28, 2011] asserting that the production company had violated minimum wage and overtime laws by hiring dozens of such interns,” (Greenhouse, 2011). The unpaid interns completed minimal work such as secretarial and janitorial duties. One intern’s responsibilities included preparing coffee, cleaning the office and even taking out the trash. This intern, Alex Footman stated, “The only thing I learned on this internship was to be more picky in choosing employment opportunities... ‘Black Swan’ had more than \$300 million in revenues. If they paid us, it wouldn’t make a big difference to them, but it would make a huge difference to us.” The lawsuit is seeking punitive damages and rewards as well as an injunction to Fox Searchlight Pictures.

On the other hand, other movie companies are in agreeance with Fox claiming that the industry’s unpaid internships offer valuable insight to actual jobs in the movie category and serve as a gateway to the movie industry. When put like that, any intern would jump at that kind of offer. Still, the demands and work nature are found as illegal. Fox Searchlight Pictures simply did not follow the Wage and Hour Division’s criteria in determining whether or not an internship is legal or not, or so it appears. The case is still underway and a final decision is not yet clear. However, if the industry did not comply with the 6 guidelines then the final outcome is obvious. More than likely, Fox Searchlight Pictures will accuse for misuse of unpaid internships or at least that is plaintiff’s aim. Alex Footman adds, “I hope this case will hold the industry to a higher standard and will get rid of this practice,” (Greenhouse, 2011).

### **PRECAUTIONS FOR THE POTENTIAL INTERN**

The online blog, *Unfair Internships*, provides suggestions as to what precautions interns may take as an effort to avoid “unfair” circumstances when it comes to finding internships. For the intern, the best possible situation in today’s economy would be finding a paid internship. Below are the steps this blog recommends:

#### **1. “Say it loud”**

Make a stand against unfair internships. If the appropriate conditions exist and pay is legally necessary, then an internship would be considered “fair”. Therefore, if an individual denies an internship due to compensation that is not adequate, the individual should voice to the employer the reason for rejection. This is a one step forward in creating awareness for the employer.

2. **“Do not apply for unfair internships”**  
Simply, an individual should seek proper job positions with his or her specific criteria for the job in mind.
3. **“Add language from the Fair Labor Standards Act”**  
If a person does work under an “unpaid” internship status, the intern should make sure the 6 guidelines of the FLSA are covered in his or her contract in order to make sure the nature of the internship is in fact legal.
4. **“Report your employer”**  
By reporting an illegal practice to the Department of Labor, an intern may not only fight the issue, but also have his or her privacy protected by the government.
5. **“Report offers for unfair internships”**  
Within the blog, *Unfair Internships*, an interesting, yet defiant approach was mentioned: “A fun way to discourage unfair internships is to flag the Craigslist postings that offer them. They are illegal after all,” (“What To Do”, *Unfair Internships*).

## CONCLUSION

Use of unpaid internships is on the rise. Consequently, it behooves employers to ensure its internship program meets federal guidelines outlined in the Fair Labor Standards Act, (U.S. Department of Labor, *Fact Sheet #71*, 2010). Employers should also seek legal counsel when considering the use of unpaid internships. Employers/interns may contact the Department of Labor for assistance concerning any additional questions pertaining to the internship guidelines.

In any event, the best practice is to provide compensation, however, modest so the law is met. In that way the internship provides a positive experience and if the intern is hired he/she joins the organization more motivated than he/she would have otherwise before. Should the intern not be hired, is often the case, he/she or more likely to portray their experience and the company to other prospective hires in a positive light.

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