

IS YOUR INTERNSHIP PROGRAM IN COMPLIANCE WITH FEDERAL LAW?

The questions surrounding intern compensation are numerous, complex, and amongst the most highly debated in the world of experiential education. There is virtually no case law when it comes to internship programming. In fact, a detailed search of case history throughout the United States over the past several decades yields five court cases. None of them are related to intern compensation. Due to the lack of case law, the regulations set forth by the Fair Labor Standards Act are left open to interpretation by labor attorneys, employers, and universities. In 1980, the U.S. Department of Labor published a document to provide clarity to parts of the Fair Labor Standards Act. A major component of this publication was geared towards defining the employment relationship between a college intern and the host organization.

The following has been referred to as the Six Prong Test.

“Whether trainees or students are employees of an employer under the [Fair Labor Standards Act] will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the mean of the [FLSA]:

- 1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;*
- 2) The training is for the benefit of the trainees or students;*
- 3) The trainees or students do not displace regular employees, but work under their close observation;*
- 4) The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;*
- 5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and*
- 6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.”¹*

While four out of the six prongs could arguably be satisfied by the majority of internship employers, prong #3 and prong #4 are likely to cause problems. Many employers choose to hire interns to temporarily replace employees who temporarily left the organization, such as for maternity leave or disability leave. In a tough economy, some organizations have let full-time employees go in lieu of lower-cost interns. These practices may fault the third prong.

Most employers will find trouble proving their internship program satisfies the fourth prong. The business case for employers to host interns completely relies on the fact that the organization will receive some sort of overt benefit. Purely by definition, the only way around the fourth prong would be to host a student who does absolutely nothing more than job shadowing.

The Six Prong Test holds that interns are, in most cases, employees of their host organization, and therefore, as employees they should receive monetary compensation equal to or greater than the federal minimum wage. However, in a 2004 Opinion Letter, the U.S. Department of Labor noted that not all interns need to be paid

“if [the student] obtains college credit for the internship... A faculty coordinator is responsible for advising the student interns and consulting with the company supervisor on a regular basis regarding the student’s performance. The company assumes responsibility for the direct supervision of the student intern. A company supervisor consults with the faculty coordinator about any problems the student encounters and submits an evaluation of the student at the completion of the program.”²

Employers should remain conscious of the legal environment surrounding internship compensation. A recent Intern Bridge survey of over 42,000 students nationwide found that 18% of interns do not receive monetary compensation or college credit, a major violation of the Fair Labor Standards Act

1. U.S. Department of Labor. Employment Relations Under the Fair Labor Standards Act. WH Publication 1297. Reprinted August 1985.

2. U.S. Department of Labor. Opinion letter FLSA2004-5NA. May 17, 2004.

This paper is intended to provide a brief introduction to the many social, economic, and legal issues surrounding intern compensation. For more in-depth information, consult legal counsel, partner universities, professional associations or Intern Bridge.

To learn more about Internship Program Best Practices, including a library of additional free whitepapers, visit our website at www.InternBridge.com.