



Internship Programs Face Increased Regulatory Scrutiny

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At this time of year, many firms take on interns, typically undergraduate students who perform a variety of tasks for the company. In many instances, these interns are unpaid or receive only a modest stipend. With the recent economic downturn, more companies than ever are tempted to use unpaid interns to supplement their existing paid workforce.

In recognition of that reality, the U.S. Department of Labor has recently announced that it will be stepping up enforcement efforts in this area. To that end, the DOL issued a fact sheet in April reminding employers that interns must be paid in accordance with federal law, unless the strict requirements of a six-part federal test are satisfied. Although the federal test is not new, employers that either have unpaid internship programs or are contemplating instituting such programs should examine the program carefully and assess whether it would be able to withstand increased regulatory scrutiny.

The Labor Department applies a six-factor test in determining whether an intern is an "employee" for purposes of the Fair Labor Standards Act. That test reads as follows:

1. The training is similar to vocational school.
2. The training is primarily for the benefit of the intern.
3. Interns do not displace regular employees, but instead work under their close supervision.
4. The company derives no immediate advantage from the intern's activities.
5. Interns are not necessarily entitled to a job at the conclusion of training.
6. Interns understand they are not entitled to wages.

To avoid misunderstandings and enhance the likelihood that an internship program will survive scrutiny by the government, the best practice would be to provide each intern with a written description of the program at the outset of the internship.

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