



## School-Facilitated Internships: No Worries, Right?

Insights

2.28.14

We have long warned that one should *not* simply assume that an internship associated with or sponsored by an educational institution falls outside of the federal Fair Labor Standards Act's requirements. Our caution includes situations in which the intern receives academic credit for the time so spent.

### Now, More Heat On Academia

Not surprisingly, the rash of intern lawsuits and intern-related publicity has now provoked a number of "pay your interns" campaigns and on-campus initiatives directed at schools and universities. The news site *ProPublica* is writing extensively about this and has undertaken to investigate "schools' role in the issue" (among other things).

Academic institutions are of course reacting to these developments and pressures. Reports suggest that few if any of them will be prepared to withdraw from the facilitation of unpaid internships just yet. However, many are implementing other measures that organizations contemplating offering internships to students should carefully review and evaluate.

For example, organizations that are considering posting, otherwise publicizing, or collaborating on internship opportunities at such an institution should not be surprised to find that its administration will require that they confirm or even affirmatively agree to comply with various "guidelines" and specific commitments. Depending upon the details, it is conceivable that doing so might, as illustrations, (i) create contracts or legally-enforceable undertakings of another kind even aside from FLSA requirements, or (ii) be offered in connection with a later FLSA claim as alleged evidence of a knowing violation. Anyone who is deciding whether to confirm or accept such terms should thoroughly consider the ramifications of doing so.

Indications also are that many schools will be encouraging paid internships. And it is foreseeable that at least some schools will be making a more hands-on effort to monitor and supervise internships in an ongoing way.

### Remember The Basics

Even if an internship is arranged through or with the involvement of a school, the principal FLSA issue is still whether the person is or is not an "employee" who is subject to that law's requirements. The answer is not going to be controlled by what the intern, the internship provider, and/or an educational institution might have thought or even agreed to on this score.

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Instead, the determination has more to do with whether the actual facts and circumstances clearly demonstrate that the relationship is one of non-employment that is genuinely undertaken and carried out for the purpose of generalized learning, education, and training that imparts to the intern significant knowledge of a broadly-applicable kind. Boiled down to essentials, this is what the U.S. Labor Department's statements on the subject are aimed at evaluating.

Bear in mind also that:

- ◇ Whatever USDOL or an educational institution might think about whether an intern is an FLSA "employee", individuals are free to file their own FLSA lawsuits to resolve the question.
- ◇ States and other jurisdictions can take their own positions regarding internship status under their particular wage-hour laws, positions that might tend to favor a finding of "employment" under those laws.
- ◇ Some of the claims being made involve "paid" interns who allege that they were "employees" whose pay did not meet the requirements of all applicable laws. So simply paying an intern something (like a small stipend) does not necessarily eliminate the possibility of a later government investigation or court fight.

### **The Bottom Line**

There is no inherent protection against claims or liability arising out of an internship just because the relationship was undertaken in conjunction with an educational institution and/or involved academic credit.