



Unpaid Internships At Non-Profits Or Arranged By Schools

Insights

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Our [earlier post](#) prompted questions about whether federal Fair Labor Standards Act principles are different for unpaid internships at non-profit organizations or for those sponsored by educational institutions for which the intern receives academic credit. The short answer is: No, they are not.

USDOL Statements Sound Encouraging

It is of course true that Deputy Wage and Hour Administrator Nancy Leppink's ominous quote referred to "for-profit" entities, and this is the sector upon which [Fact Sheet # 71](#) focuses. Furthermore, a Fact Sheet footnote says that unpaid internships are "generally permissible" for a non-profit charitable organization in the right circumstances. The publication further implies that the relationship is more likely not to be viewed as FLSA employment if it is "structured around a classroom or academic experience . . .," such as "where a college or university exercises oversight over the internship program and provides educational credit . . ."

Perhaps this reflects a Labor Department preference for encouraging what it believes to be the inherently-nobler pursuits of charities or educational institutions. There might even be a degree of Executive Branch self-interest involved. For example, full-time, unpaid White House interns are expected to:

◇ [Perform](#) tasks such as "conducting research, managing incoming inquiries, attending meetings, writing memos, and staffing events"; and

◇ [Engage](#) in their activities at least 4½ days a week, Monday through Friday, from 9 a.m. until 6 p.m.

This looks a lot like being "engaged in the operations of the employer or . . . performing productive work," activities which the Fact Sheet says would be viewed as FLSA employment where a "business" is concerned. But this does not mean that everyone else gets to do the same thing.

Don't Be Lulled To Sleep

Non-profit organizations permitting internships, and entities considering participating in student internships, should not simply assume clear-sailing where the risk of FLSA claims is concerned.

For one thing, it is unlikely that USDOL sees such unpaid internships as being "generally permissible" in each situation, or for non-profits of every kind, or for all school-sponsored arrangements. Even USDOL does not consider the Fact Sheet to be an authoritative or binding official

position. Moreover, the Fact Sheet itself says that USDOL "is reviewing the need for additional guidance" on internships in the non-profit sector. So notwithstanding the Fact Sheet's statement about what is "generally" the case, do not doubt that USDOL will assert FLSA liability for a particular unpaid internship, even one undertaken with a non-profit or in conjunction with a school, when it deems this to be warranted.

And even were it otherwise, USDOL is not the only potential source of a challenge. Interns are perfectly free to assert their own FLSA claims in court should they decide to do so, without regard to what USDOL thinks or does.

The Bottom Line

Whether an unpaid internship occurs under the auspices of an educational institution, in a non-profit organization, or at a for-profit business, in the end the FLSA question still gets down to some version of this: Do the circumstances clearly show that the relationship is for the purpose of generalized learning, education, and training that imparts to the participant significant knowledge of a broadly-applicable kind, or do they instead indicate that the idea is to have the person perform work?

In other words, if the motivation is something like, "We could sure use help from an intern this summer," that is a danger sign – whether the setting is for-profit, not-for-profit, school-related, or any other.