



Are Unpaid Internships Worth The Risk? (UPDATED 03/15/12)

Insights

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For awhile now, unpaid internships have been a hot topic under the federal Fair Labor Standards Act. We noted some time ago that the U.S. Labor Department was taking a skeptical view of these relationships.

In conjunction with the April 2010 release of Fact Sheet # 71, the U.S. Wage and Hour Division's Deputy Administrator Nancy Leppink announced what appears as a practical matter to be a rebuttable presumption that many such internships violate the FLSA: "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."

Since that time, lawsuits against The Hearst Corporation and Fox Searchlight Pictures (links to copies below) and others show that the prospects for FLSA claims by current or former unpaid interns are by no means merely hypothetical.

Reports suggest that, with summer approaching, and in the context of continued high unemployment, more people than ever are beseeching organizations of various kinds to take them on as unpaid interns. But in the current wage-hour environment, it should surprise no one that, as *USA Today* recently reported, many organizations are doing away with these internships altogether. Perhaps this represents an unfortunate reduction in learning opportunities, but it is also an entirely foreseeable reaction by those who are in a position to permit them.

The answer to the question, "Are unpaid internships worth the risk?" is that only the organization being asked to provide one can decide this in the context of its own circumstances, capabilities, and philosophy. In thinking about it, management will want to take into account the mindset exemplified by a recent endorsement by "The Ethicist" at the *New York Times* of the suggestion that an inquirer should *both* "take the internship and then call the Labor Department . . ."

If management concludes that it is willing to allow unpaid internships, then it should plan, structure, and supervise them very carefully, bearing in mind the ambiguous criteria that will be applied should an intern later decide to claim that he or she should have been treated as a paid employee under the FLSA. Remember also that, if an intern under the age of 18 is later deemed to have been an employee for FLSA purposes, there is also the potential for the assertion of child-labor violations and substantial penalties in addition to liability for back-pay and other sums.

UPDATE 03 15 12: Another high-profile lawsuit has been filed by a person claiming to have been an unpaid intern. This one is brought by an "Editorial Intern" against PBS talk-show host Charlie Rose and Charlie Rose, Inc. under New York wage-hour law (link to copy below). The named plaintiff also seeks to assert claims on behalf of a class of such interns.

[Glatt v. Fox Searchlight.pdf \(1.37 mb\)](#)

[Wang v. Hearst.pdf \(1.81 mb\)](#)

[Bickerton v. Rose.pdf \(836.47 kb\)](#)