



Coincidental or Coordinated? Unpaid Internships Drawing Lots Of Attention (Updated 05/25/10)

Insights

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A spate of recent developments signals potential trouble for organizations allowing unpaid internships, particularly profit-seeking entities. The kickoff was an April 2, 2010 [New York Times piece](#), the tenor of which was that many such internships amount to illegal unpaid employment. The article quoted the U.S. Wage and Hour Division's Deputy Administrator Nancy J. Leppink as saying, "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."

This was followed by the April 5 release of a similarly-toned report from the labor-side Economic Policy Institute. And, on April 7, California's Division of Labor Standards Enforcement issued a [letter opinion](#) outlining its views about under what circumstances these relationships are permitted by that state's laws.

Then last week, the U.S. Wage and Hour Division released its [Fact Sheet # 71](#) in which it listed six criteria that it said "must" be applied, "all" of which must be met, in order for an unpaid internship not to violate the federal Fair Labor Standards Act where for-profit, private-sector organizations are concerned. These factors, which have not been the subject of notice-and-comment rulemaking, are (with some editing):

- The internship is similar to training given in an educational environment, even if it includes actual operation of the employer's facilities,
- The internship is for the intern's benefit;
- The intern does not displace regular employees but instead works under the existing staff's close supervision;
- The employer derives no immediate advantage from the intern's activities, and its operations might occasionally actually be impeded;
- The intern is not necessarily entitled to a job at the internship's end;and
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

Whether public-sector and non-profit internships will be viewed with skepticism similar to that running through this document remains to be seen (although the Fact Sheet implies that they might not be). The Wage and Hour Division says that it is "reviewing the need for additional guidance" in these areas. Even those sectors should therefore proceed with caution.

Maybe all of this is remarkable happenstance. Or maybe instead it reveals a focused coordination of efforts aimed at coming enforcement initiatives. Either way, any for-profit organization that is still willing to take on unpaid internships should structure and handle them so as to maximize the chances that they will be found not to create employment relationships for wage-hour purposes.

UPDATE 05/25/10: Fisher Phillips Partner Joel W. Rice has published observations and recommendations relating to internships in *Workforce Management Online*.