



## Is Your Intern Program Legal?

With summer just around the corner, many companies are gearing up to add at least one intern to their staff for a few months. In the engineering field specifically, firms are looking for low-cost workers to help out as work begins trickling in and are searching for quality entry-level candidates to prepare them for the anticipated engineer shortage. Interns often have a lot to offer. They are a great way to find future employees who fit well with your company. They can assist your current employees with big projects. And, they bring fresh, innovative ideas to the table. But, just because someone is an intern doesn't mean they're a risk-free asset.

Several liability issues surround interns, including pay, healthcare, and harassment claims. Pay has become a hot topic recently. An April 2, 2010, article in *The New York Times* highlighted the recent probes on state and federal levels into the compensation of interns. Oregon and California are just a few of the states that are investigating and fining employers that aren't in compliance with the Fair Labor Standards Act and state and local minimum wage laws. The article also reported, "The (federal) Labor Department says it is cracking down on firms that fail to pay interns properly and expanding efforts to educate companies, colleges, and students on the law regarding internships."

Nancy J. Leppink, the director of the Department of Labor's wage and hour division said, "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." Even exchanging college credit for pay doesn't necessarily free employers from federal consequences, although some states allow it.

Instead, in order for an organization to legally not pay an intern, six points of federal criteria must be met. The six points that must be satisfied are:

- "The training is similar to what would be given in a vocation school or academic educational instruction."
  - This means that the internship program should be primarily centered on a classroom, not the employer's actual operations. The program should also provide skills that can be used in multiple settings, not just at the employer's company.
- "The training is for the benefit of the trainees."
  - The internship should be for the benefit of the intern, which could mean that at times, managing them could negatively affect your company.



- “The trainees do not displace regular employees.”
  - If an employer uses interns in place of hiring additional employees or if the interns cause the current employees not to work overtime, then the interns are considered employees.
- “The employer derives no immediate advantage from the activities of the trainee.”
  - This emphasizes again that an unpaid trainee should provide no benefit to the employer.
- “The trainees are not necessarily entitled to a job at the conclusion of the training period.”
  - Before work-based training begins, the employer and trainee must agree that the trainee is not entitled to a job at the conclusion of the training. Even if such an agreement is made, if the employer is frequently known to hire such workers, then that suggests the trainees are truly workers and should be paid.
- “The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.”
  - Before work-based training begins, the employer and trainee must also agree that the trainee is not entitled to wages. Even if such an agreement is made, if the employer is frequently known to pay such workers, then that suggests the trainees are truly workers and should be paid.

Keep in mind that all six criteria must be met in order for an employer to legally not pay an intern. As for healthcare benefits, with the passage of the recent healthcare reform bill, employers are still sorting out how the new requirements will affect interns. And, harassment issues are also a slippery slope since employment laws can be interpreted various ways depending on whether a person is a paid intern or an unpaid trainee.

Interns can be a great asset to your team, but you have to take them seriously. Don't simply bring them on board as a form of cheap labor. Pay them fairly and provide them with a valuable, learning experience that will benefit everyone. If you aren't sure how to compensate them, research what other local companies are paying their interns.

Also, keep in mind that managing interns can be a full-time job and can be quite the juggling act when everyone is trying to take summer vacations. So consider hiring a contract engineer who can take over the duties of your core engineers who are spending their time managing these summer additions over. Or add a temporary, experienced office manager who can oversee the interns. Whatever you decide to do this summer, remember that Express Employment Professionals' Specialized Recruiting Group is here to help with all your professional staffing and HR needs.