

BE CAREFUL WITH INTERNSHIPS

Often in summer a friend's has a child home from college who is interested in your business' market space. The friend asks if his son or daughter can be an unpaid intern so as to get some experience and check out the industry. You want to say yet – but you should consult counsel first. Because what you do as a favor to a friend could make you liable under California's wage and hours laws. (see the attached memo)

There is a common misconception about internships. Many employers believe all interns are unpaid works. Unfortunately, this is not the case. Not all interns are unpaid; and most interns are considered employees under the law.

In 2010, the California Division of Labor Standards Enforcement (DLSE) issued an opinion letter providing some guidance on when an intern is truly an intern. The DLSE, as well as the Federal Department of Labor (DOL) apply a six-factor test, established by the DOL, to evaluate a specific internship program.

Calling someone an intern does not make them an intern. For a worker to qualify for a nonpaid internship the following criteria are used to analyze the position:

- The training, even though it includes actual operation of the employer's facilities, is similar to that which would be given in a vocational school.
- The training is for the benefit of the trainees or students.
- The trainees or students do not displace regular employees, but work under close observation.
- The employer derives no immediate advantage from the activities of trainees or students, and, on occasion, the employer's operations may be actually impeded.
- The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
- The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

The DLSE does not treat internships lightly. If a business has unpaid “interns” working for it, the business needs to make sure to use specific criteria to define the work that the interns perform and that the business follows the applicable legal requirements. Most “interns” will be considered employees under California and Federal law, and a business will need to comply with wage and hour laws, including paying them at least minimum wage. A business should closely follow the six-factor test used by California and Federal agencies.

In addition, California’s Fair Employment and Housing Act (FEHA) was amended to respond to court decisions that held unpaid interns and volunteers were not entitled to discrimination and harassment protections. Accordingly, FEHA now provides unpaid interns, as well as volunteers, with the following protections: against harassment, against discrimination, religious belief, and religious accommodation requirements.

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