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# Alert

Employee Benefits

## How Unpaid Interns Can Cost You Plenty

Green & Seifter, Attorneys, PLLC

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There is growing evidence that employers are using unpaid internships as a way to hold down costs. Interns often oblige, accepting unpaid work in order to gain job experience, enhance their resume, and have an “inside track” to receiving a job offer. The National Association of Colleges and Employers recently suggested that unpaid internships are becoming commonplace and some experts estimate that there are hundreds of thousands of students and others who work for free in the United States.

Employers, however, are mistaken if they believe that merely because someone is willing to work without pay, that it is legally permissible to enter into such an arrangement. Failing to pay an intern who should properly be classified as an “employee” is a violation of both New York and federal labor law. The United States Department of Labor and many state labor departments are cracking down on companies that fail to pay interns properly. Employers who misclassify workers as “unpaid interns” can incur thousands of dollars in costs for unpaid wages, overtime compensation, fines and penalties, and unnecessary attorneys’ fees. Moreover, the improper classification of a worker as an unpaid intern can create problems for employers in other areas of the law including discrimination laws, workers’ compensation law, federal and state tax laws, employee benefit laws, and unemployment insurance coverage.

The Department of Labor focuses on six criteria for determining whether an unpaid internship is a valid arrangement. Those six criteria are:

- (1) whether the internship is similar to what would be taught in a vocational school or academic institution;
- (2) whether the training is for the benefit of the intern, and not the company;
- (3) whether the intern may be displacing a regular employee and are working under an employee’s close observation;
- (4) whether the company derives any immediate advantage or gain from the intern’s services;
- (5) whether the intern is entitled to receive a job offer at the conclusion of the internship; and
- (6) whether the intern and the company understand that the intern will not receive compensation for the work performed.

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To avoid the potential pitfalls associated with an unpaid internship, we suggest that our clients consider:

(a) having an agreement or letter of understanding that clearly expresses the parties' understanding that no wages will be provided to the intern for the services to be performed;

(b) having an agreement explaining how the internship will provide educational or vocational benefits to the intern;

(c) having an agreement expressing the employer's intention not to obtain economic advantage from the relationship;

(d) adopting a company policy that sets forth a strict guideline for the supervision of interns and how interns may be used within your company; and

(e) ensuring that structure is provided to internship programs to minimize the risk of breaching any of the Department of Labor's criteria for evaluating the intern's status.

If Green & Seifter, Attorneys, PLLC, can provide you with additional insight and information regarding unpaid internships and how to avoid the pitfalls associated within the misclassification of workers, please contact John L. Valentino. John Valentino is a Managing Member of Green & Seifter, Attorneys, PLLC, ([www.gslaw.com](http://www.gslaw.com)) and concentrates his practice in the areas of Business Transactions and Employment Law. He can be reached at [jvalentino@gslaw.com](mailto:jvalentino@gslaw.com) or (315)701-6308.



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