

Legal Issues

The following portion on legal issues is taken from “Starting and Maintaining a Quality Internship Program” compiled and edited by Michael True, Director of Internship Center at Messiah College.

Do you have to pay the intern?

The U.S. Fair Labor Standards Act (FLSA), which applies to all companies that have at least two employees directly engaged in interstate commerce and annual sales of at least \$500,000.00 severely restricts an employer’s ability to hire paid interns.

You don’t have to pay interns who qualify as leaders/trainees. The U.S. Department of Labor has outlined six criteria for determining trainee status:

1. Interns cannot displace regular employees.
2. Interns are not guaranteed a job at the end of the internship (though you may decide to hire them at the conclusion of the experience.)
3. Interns are not entitled to wages during the internship.
4. Interns must receive training from your company, even if it somewhat impedes the work of your organization.
5. Interns must get hands-on experience with equipment and processes used in your industry.
6. Interns’ training must primarily benefit them, not the company.

Workers and Unemployment Compensation

Workers’ compensation boards have found that interns contribute enough to a company to make them employees. It’s wise to cover interns under your worker’s compensation policy even though you aren’t required to do so. Student interns are not generally eligible for unemployment compensation at the end of the internship.

Keep in Mind

Even if a student is working through a school program for which he or she is being “paid” in college credits, the student still has the right, under the FLSA, to be paid unless the employer is not deriving any immediate advantage by using him/her.

Paid interns make ideal workers – hungry to learn, eager to make a good impression and willing to perform even the most menial tasks. The relatively small amount of money employers spend on intern wages and benefits is a good investment, because it often produces future, long-term employees.

The employer should identify the specific terms and conditions of employment (e.g., dates of employment as intern, including date internship will end; compensation; organization and/or reporting relationships; principal duties, tasks or responsibilities; working conditions; any other expectation of the employer), and should discuss these with the prospective intern, so that there is no misunderstanding regarding the relationship. Also, it may make good sense to document such a discussion with a written agreement setting forth both parties’ understandings, and have it signed by both the employer and the intern.

If an intern is harassed at your organization, and you don’t do anything about it, your organization opens itself to the risk of lawsuits. Take time to advise your interns of appropriate workplace behavior, the organization’s harassment policy and complaint procedures.

International Students

The most common visa types employers will see on college campuses, when recruiting undergraduate or graduate students for either full-time or internship positions are the F-1 and J-1 visas.

“An F-1 visa is granted to a person coming to the U.S. to attend a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program approved by the U.S. Attorney General for study by foreign students. The visa holder plans to return home after completing studies. This is the most common non-immigrant visa for an international students attending undergraduate and graduate school. Students are granted F-1 status until the completion of the academic program and 12 months of post-program practical training. The purpose of the F-1 visa is to provide an opportunity for study in the U.S. Anything outside of study, including employment, is an exception to the visa. Authorization for employment is strictly limited to certain situations.

- The student holding F-1 status for a full academic year and in good academic standing may work off campus. Such work authorization is granted when the student has sustained unforeseen economic hardship. Also, the student may not work for more than 20 hours per week when school is in session, but may work full time during holidays and vacations, including breaks between terms, provided the student intends to register for the next school term.
- Curricular Practical Training: an F-1 student may perform curricular practical training prior to the completion of the educational program as part of his or her educational experience. The government defines this type of training as ‘alternate work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through agreements with the school.’
- Post-completion of Optional Practical Training: This is temporary employment directly related to the student’s major area of study that takes place after the student completes a full course of study. Authorization for this training may be granted for a maximum of 12 months of full-time or part-time work. Those on a student visa can only gain authorization once for this type of training.”

The above information is adapted from a web article by Rochelle Kaplan, General Counsel for the National Association of Colleges and Employers (NACE). Reprinted with permission of NACE, copyright holder. For more information on these and other legal issues related to hiring, see NACEweb at www.naceweb.org.

For more information on hiring/paying an international student attending Lock Haven University, please contact the Institute for International Studies at (570) 484-2140 or <http://www.lhup.edu/international/>