

Human Resources BRIEF



Spring and Internships are Coming Soon!

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The beloved groundhog Punxsutawney Phil has predicted the remaining duration of winter. While the prediction isn't what most hoped for, six more weeks of winter weather, we are moving closer to spring every day. While we steadily progress towards longer days and better weather, many employers are navigating a competitive talent landscape and creating short-term and long-term staffing plans to meet their business needs.

One strategy employers can use to meet some of their workplace staffing needs and build a future pipeline of talented workers is to establish summer internship programs. These programs can benefit both employers and interns if conducted properly, a true win-win. Employers can provide opportunities for students to demonstrate and advance their skills while completing tasks and projects that full-time staff may not have been able to carve out time for or complete without additional help.

When creating internship programs, employers need to establish the proper protocols and make sure they are compliant with applicable laws. In addition to meeting compliance requirements, there are other considerations for employers in developing and implementing successful internship programs. This HR brief will cover some key compliance requirements and address some general best practices related to internship programs.

Compliance Related Considerations for Internship Programs

As with most employer initiatives, ensuring compliance with applicable laws and regulations is an essential step to take before implementing an internship program. The following section of this HR brief will cover some of the most important compliance areas.



Determining if the Internship Must be Paid

Determining compensation requirements for interns is one of the key compliance issues for an internship program. For nearly all private employers, interns should be paid at least minimum wage and any applicable overtime under the Fair Labor Standards Act (FLSA).

Intern programs for non-profit organizations and some college/employer training programs can be unpaid if they meet specific requirements.

The FLSA requires “for-profit” employers to pay employees for their work. For employers to not be required to compensate interns, the interns would have to be deemed non-employees. Demonstrating that a worker is a non-employee under the FLSA is a high bar to meet. Employers should designate interns as employees unless they can clearly demonstrate they are not employed under the “primary beneficiary” test of the Department of Labor (DOL).



The Primary Beneficiary Test

In 2018 the DOL updated the factors to be considered for determining whether interns and students working for a “for-profit” employer are employees entitled to minimum wages and overtime pay under the FLSA or non-employee trainees who can legally perform unpaid work. The DOL provided clarity by updating their *Fact Sheet #71: Internship Programs Under the FLSA*. The basis for the adjusted approach for determining the employment status came from various court opinions applying the “Primary Beneficiary” test. Under this test, an internship arrangement is looked at in its totality. No one factor alone determines if the internship should be paid or unpaid. The primary beneficiary test seeks to determine the economic reality of which party benefits most from the internship. Seven factors are used in performing this analysis. Ultimately, the bar is set very high against unpaid work.

Most summer internship programs that don’t provide college credit or specialized training coordinated with learning institutions will need to compensate their employee interns. If there is any doubt whether an intern should be compensated after applying the primary beneficiary test, the safest approach for employers is to pay interns at least the required minimum wage.



Exceptions for Volunteer Work for Non-Profit, Religious, Charitable, and Civic Organizations

The FLSA recognizes an exception to the minimum wage and overtime compensation requirement for individuals who volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. The FLSA also exempts volunteers who perform services for state or local government agencies or volunteer to work at non-profit food banks. These provisions make unpaid internships in the public sector and nonprofit charitable organizations more permissible under the FLSA than for “for-profit” private sector employers.



Penalties for Employers That Fail to Pay Required Wages

If employers fail to pay interns entitled to compensation under the FLSA, there are many possible negative consequences. These include administrative penalties, owing back pay, Social Security, unemployment benefits, and lawsuits. The risks can be significant but can be eliminated by paying interns at least the applicable minimum wage.



Preventing Discriminatory Harassment of Interns

Protecting interns from harassment and the business from liability for workplace harassment are important responsibilities of employers. Preventive actions should be taken to protect both interns and the organization's business interests. Interns should receive training that includes the most significant company policies, but policies related to discriminatory harassment are essential.

Human resources or compliance personnel should make sure harassment prevention training is included in the initial orientation and onboarding of the intern within the first days of their employment. Interns should understand and identify the type of conduct that is not acceptable and what to do if they experience or observe harassing behavior.

Interns should also be educated on the complaint procedures available and the expectation that any harassment is reported. The training should make it clear to interns that retaliation related to harassment complaints is not permitted.



Alcohol During Company Events and Gatherings

Alcohol consumption at company events and gatherings should be avoided when interns participate. The liability of providing alcohol to underage interns is obvious, but it may also be wise to exclude alcohol from functions that include interns even if they meet the minimum legal drinking age.



Recordkeeping Related to Interns

Employers should maintain a personnel file for each intern employee, as they do for all employees. A signed acknowledgment of receipt of company policies and expectations should be included in the employee file of the intern.

Hiring Process for Interns

The intern hiring process should follow the same general steps that employers use for their regular employees. This will help employers bring in the most qualified interns and remain compliant with all the laws and regulations they are required to follow.

It is common for employees and even customers to refer candidates for internship opportunities. While it may be helpful to obtain these referrals, employers need to make sure the internship opportunities are determined fairly and the candidate selection process is followed. There are many benefits to this approach. If the process is unfair and not transparent, intern candidates will likely learn of this and be less likely to apply to the program. Regular employees may also view favoritism in selecting interns unfavorably, negatively impacting company culture. Relying on referrals can potentially be a barrier to increasing diversity in some workplaces.

Employers should follow any anti-nepotism policies and ensure that there are no conflicts of interest when hiring interns. An intern should not have a direct or indirect reporting relationship with a relative. Eliminating any perception of a conflict of interest is good for the general workplace morale and the intern. The intern will know their achievements are their own and fairly earned.



When to Recruit for Internship Opportunities

Employers should start recruiting interns as soon as the business has secured organizational support for the internship program. The earlier an employer begins its recruiting efforts, the larger the candidate pool will be. Students often look to secure opportunities over the winter holiday break or early spring. This is especially the case for internships requiring more technical skills where there is more competition. An earlier selection process helps secure the best talent when hiring these in-demand students.

Best Practices in Internship Programs

The following are some examples of sound practices that can be followed to facilitate the internship program's success.



Acknowledge the Intern's Experience Level

Employers need to remember that workplace settings can be a new and complex experience for interns. Patience and understanding in interactions with interns are important.



Including Interns to the Greatest Practical Extent

For the best internship experience, interns should be included in the organization's business activities. It is important to invite them to participate in company meetings and events. Managers of interns should make sure they are added to appropriate meeting invitations and distribution lists.



Assigning Mentors for Interns

Assimilating interns into the workplace and supporting them throughout their time with the organization is important and can be accomplished in various ways. They can be assigned a mentor or peer guide to help them navigate issues and answer any general questions they have. The intern's assigned mentor can check in on them and offer support and encouragement. Employees who have demonstrated the appropriate behavioral competencies should be chosen for these mentor roles.



Providing Meaningful Assignments and Establishing Expectations

Employers should provide meaningful work and projects for interns and strive to keep the intern engaged. Prior planning related to the job an intern will be assigned is important. The intern's leader should identify appropriate daily work activities and any longer-term projects and support the intern in their work. The intern's manager can also schedule periodic one-on-one sessions. During these sessions, any questions can be answered, feedback can be delivered, and general support can be provided to the intern.



Confidentiality of Proprietary Company Information

Employers should make sure interns are fully aware of their responsibilities regarding the confidentiality of proprietary company information. Most employees who have been in the workforce recognize their responsibilities in this regard, but interns may need education on this subject.



Social Media

Employers should make interns aware of the organization's social media policy and expectations. Employer requirements may not always be intuitive to an intern, and clarifying the rules is important. Appropriate training can prevent issues in most instances.

Next Steps

Employers desiring to establish internship programs should begin reviewing all the budgetary and compliance requirements to support their programs. Determining the desired number of positions and which business areas can best utilize and support interns is an important initial step.

Establishing a well-constructed program and obtaining the appropriate organizational support will set up the program and the interns for success. The endeavor is worthwhile, as the business case for internship programs is strong and can create goodwill for the employer, contribute to the development of the future labor force, bring fresh ideas into the workplace, and secure contributions to important projects.

Spring brings many welcome changes and growth. A well-designed and supported internship program can also provide growth and new beginnings for both businesses and interns. Spring and internship season will be here before we know it, and that is an exciting prospect indeed!