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Navigating the Summer Internship Wave: What Employers Need to Know



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With summer officially here, students across the country are beginning internships, eager to gain experience and make their mark. While this seasonal influx offers valuable recruitment opportunities, it is important to stay mindful of both federal and local labor laws.

We have compiled a list of key points for employers to consider as the wave of summer interns begin to crash upon Chicago's (or your nearest) shoreline.

Should You Be Paying Your Summer Interns?

The Fair Labor and Standards Act ("FLSA") requires for-profit employers to pay their employees. However, the statute does not automatically classify interns as employees.

To ensure compliance with the FLSA, the Department of Labor has developed the "Primary Beneficiary Test" to determine whether an intern qualifies as an employee. Aimed at examining the "economic reality" of the intern-employee relationship, the test analyzes which party is the primary beneficiary of the relationship. This seven-factored test includes:

- The intern understands they will not be paid by the employer.
- The intern is receiving training similar to what is given in an educational environment.
- The internship is tied to the intern's education, via academic credit or coursework.
- The internship corresponds to the intern's academic calendar.
- The intern benefits more than the employer.
- The intern's work does not take the place of a paid employee.
- The intern is not guaranteed future employment by the employer.

While this test is flexible and no single factor is dispositive, many unpaid internships are unlikely to withstand this scrutiny. To be clear, if the employer is the primary beneficiary of the relationship, then the intern is an employee and is entitled to FLSA protections, including paid wages. When in doubt, for-profit employers should generally pay their interns unless the interns are hired through an academic program.

How Much Should You Be Paying Your Interns?

Summer interns who qualify as employees are entitled to both minimum wage and overtime under the FLSA. Minimum wage will vary depending on where your business is located. The FLSA establishes the federal minimum wage provision of \$7.25 per hour.

However, many state laws and/or local ordinances provide for higher minimum wages. Within the state of Illinois, for example, the minimum wage is \$15.00 per hour. For employers within the city of Chicago, the Chicago Minimum Wage ordinance requires employees be paid \$16.20 per hour. Similarly, minimum wage within the state of Colorado is \$14.81 per hour and rises to \$18.81 per hour within the city of Denver.

Interns who are deemed employees and are paid hourly are also entitled to be paid for any overtime worked. Under the FLSA, employers must pay non-exempt employees (including summer interns) at a rate of 1.5 times their “regular rate” for all hours worked in excess of 40 per week. Again, state laws can have slightly different requirements for the payment of overtime. (For example, Colorado also requires payment of overtime for working in excess of 12 hours in a workday or 12 hours consecutively.)

Are Summer Interns Entitled to Paid Leave?

Generally, summer interns would not be eligible for employee benefits such as health insurance. (For example, employers only have to provide health insurance to interns if they work more than 30 hours per week and more than 90 days.) Interns may, however, be eligible for paid leave under state or local ordinances.

For example, Illinois has a Paid Leave for All Workers Act (“PLAWA”). This statute mandates that eligible employees may accrue up to 40 hours of annual paid leave, accrued at a rate of one hour of leave for every 40 hours worked. There is no exception in the statute for summer interns, so they would start to accrue paid leave like all other employees. However, PLAWA allows employers to restrict use of paid leave for 90 days, such that the intern accrues paid leave but may not be able to ever use it.

Similarly, Chicago’s Paid Leave and Paid Sick and Safe Leave ordinance (“PLPSSL”) applies to most employees who perform their work duties in Chicago. Under the ordinance, both types of leave (paid leave and paid sick leave) accrue at a rate of one hour for every 35 hours worked. Like PLAWA, paid leave may be taken after 90 days of employment for any reason. However, paid sick/safe leave must be available after just 30 days of employment.

For employers in Colorado, the Colorado Health Families and Workplaces Act (“HFWA”) applies to both the state and the city of Denver. The HFWA requires Colorado employers to provide paid sick leave and public health emergency leave. Under the HFWA, eligible employees accrue one hour of paid sick leave for every 30 hours worked. There is no waiting period under the HFWA, so summer interns may use accrued sick leave as soon as it accrues.

Recap

Here are a few takeaways for your business to consider before summer interns arrive:

- The Primary Beneficiary Test is subjective, such that courts differ on the amount of weight given to each factor.
- If the intern’s work takes the place of an employee, or benefits the employer, the intern will most likely be considered an employee.
- Interns meeting this threshold are entitled to minimum wage and, if they are paid hourly, overtime.
- All paid interns are entitled to the highest applicable minimum wage.
- Interns may be eligible for paid leave or paid sick leave under local law or ordinance.

Please do not hesitate to contact any of the attorney’s in Gould & Ratner’s [Human Resources and Employment Law Practice](#) to discuss hiring summer interns.