

Interns and Student Workers
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Technical Assistance for Employers Guest Columnist

Question: I am considering offering internship opportunities at my place of business but I am not familiar with the process or the applicable laws. Are there any circumstances when interns are required to be paid? Do minimum wage laws apply? Are there any restrictions on the type of work an intern may do?

Answer: Bona fide interns are not normally considered “employees” under state and federal wage and hour and child labor laws, which means that these laws don’t apply to them. However, for an individual to qualify as an unpaid intern, the following conditions must be met:

1) A training and work experience program must be established in advance and should expose the intern to all aspects of the industry, and encompass activities designed to enrich the intern with valuable skills transferable to the intern’s future career. The key point is to establish that the intern will be benefiting from an educational experience, normally translated into school or college credit.

2) The intern must be provided with ongoing instruction as well as supervision at the worksite of the business that hosts them. The idea is that any productive work performed by the intern is offset by the time spent by the business to train and supervise the intern.

3) To make sure that the intern is not being utilized as an unpaid worker, use of an intern must not result in an employee being laid off, or in the business not hiring an employee it would otherwise hire, or in an employee working fewer hours than the employee would otherwise work.

4) While a business may offer employment to an intern after the internship ends, the completion of the internship should never be a condition of hiring.

5) The business and intern must understand prior to any services being performed by the intern that the intern will not be paid wages or other compensation for the time spent in the learning experience. If the business desires, the intern may be paid a stipend.

If the above criteria are not met, the intern would likely be determined to be an employee and must be treated as an employee with respect to all terms and conditions of employment of similarly situated employees in the business. The name given to the work experience doesn’t impact its substance: It may don the label “unpaid internship” and yet be employment subject to all the laws that regulate employment.

In a number of cases, BOLI has found that a business has violated minimum wage and wage collection laws by using interns as free labor. Additionally, employment discrimination laws may apply to interns.

Question: A student just contacted me to intern at my company, and she would receive credit for the internship. Although I think this might be interesting for both of us, I worry about liability in case of injury. If my intern is injured on the job, am I responsible?

Answer: Most often, interns in legitimate internship experiences are not covered by workers' compensation law. ORS 656.005(30) defines a worker as:

[...] any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer [...]

Without remuneration, or promise of remuneration, or being subject to the direction and control of an employer, interns are normally not covered by workers' compensation law. It is important to note, however, that if the intern is determined to be an "employee," and not an intern, the employer could be liable for both wages and worker's compensation insurance or payment for treatment of any injuries received while performing duties.

Certain categories of interns, including those registered at a college and participating as unpaid trainees in a work experience program conducted through a school district or college, may be covered by the educational institution for workers' compensation. A business should ensure that this is the case prior to engaging in an internship arrangement.

If you would like to learn more about this topic, contact Technical Assistance for Employers at 971-673-0824 or visit us at www.oregon.gov/BOLI/TA