

# EMPLOYER LEGAL CONSIDERATIONS FOR INTERNSHIPS

The most common legal concerns of internship employers are salary, worker's compensations and liability, non-compete and non-disclosure agreements, unemployment, and civil rights. The following information will help you make an educated decision about whether you want to develop an internship program for credit or no credit based on the legal issues involved. It is suggested you contact your organization's legal counsel or a lawyer that specializes in labor law for specific laws that affect your state and your organizations situation. The information provided is specific to California Labor Code and the Fair Labor Standards Act.

## **Paid Internships:**

There are many benefits to hiring paid interns. If you want to stay competitive in the intern market and recruit high quality interns, providing a salary or stipend is standard in most organizations. Minimum wage is the legal requirement for hourly positions; however, a fixed weekly, monthly or quarterly stipend, not based on hours worked, is not considered wages and would not conflict with the Fair Labor Standard Act minimum wage requirements. It is best to consider interns as employees since they have the same rights as other employees in your organization. Consider some exceptions to this if necessary.

## **Unpaid Internships:**

According to the National Association of Colleges and Employers (NACE), The Department of Labor has six criteria you can use to determine if a student is a learner/trainee (i.e. Intern) and therefore doesn't have to be paid. Not all six factors have to be present but the position should ultimately be more of a training experience than a job:

- 1) **The training, through it may include actual operation of the employer's facilities, is similar to training that would be given in a vocational school.**
- 2) **The training is for the benefit of the student.**
- 3) **The student does not displace regular employees, but works under close observation of a regular employee.**
- 4) **The employer provides training and derives no immediate advantage from activities to the student.**
- 5) **The student is not necessarily entitled to a job at the conclusion of the training period.**
- 6) **The employer and the student understand that the student is not entitled to wages for the time spent training.**

You might read the fourth criterion and think there's no way an intern could work with us and not provide some kind of benefit to our organization. Previous Department of Labor (DOL) rulings on cases where a student hasn't been paid as an intern have suggested that as long as the internship is part of an academic program and is predominantly for the benefit of the student, the fact that the employer receives some benefit from the student's services does not make the student an employee for the purpose of wages and hour law. So, even through there are no clearly-defined regulations stating that unpaid interns must be participating in an academic program where they will receive credit for the internship, it's best to conform to previous DOL rulings and pay your interns or ask that they enroll in academic credit through their college.

If your organization can't afford to hire paid interns, you should start the recruitment process early enough to allow students to enroll in the work experience class (course credit). At San Diego Mesa College, Work Experience courses provide academic credit to students interning or working in local companies. For more information go to <http://www.sdmesa.edu/work-exp>

## **International Student Interns:**

The U.S. Department of Homeland Security (DHS) does permit international students to be interns. The duties assigned to the student during the internship must relate to the student's course of study and must be completed within the course term. Students need to contact the International Student Advisor and attend a Practical Training Workshop prior to accepting an internship.

## **Worker's Compensation & Liability:**

The California Labor Code, Section 3351, states that "Employees" means every person in the service of an employer under any appointment or contact of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. According to this, interns would seem to fall under the classification of "employee" and should by law be covered under worker's compensation. The only time an intern is not required to be covered under worker's compensation, according to section 3352.i. of the California Labor Code, is if the intern is a "person performing voluntary service for a public agency or a private, non-profit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses." If your organization falls into the public agency or private, non-profit category and you are hiring interns that are unpaid, then you don't have to cover them, though it is recommended that you cover them anyways to limit your liability for job injuries to medical expenses and lost wages only. If your intern hurts someone else while working, your organization will probably be held liable as well, but check with legal counsel. Interns, who are enrolled in San Diego Mesa College Work Experience courses, are covered for Worker's Compensation by the San Diego Community College District within the course term.

## **Non-compete and/or Non-disclosure Agreements:**

There is a difference between these two agreements. According to NACE, non-compete agreements are signed documents where an employee agrees not to compete with the current employer after leaving the company. They may outline certain things that are prohibited such as working for a competitor or creating a competitive business, the geographic location in which the employee may not work, and how long the non-compete agreement will last. Non-disclosure agreements prohibit the employee from using proprietary information learned in the current organization, at a job with a new employer. Proprietary information can include such things as product information, customer information, business plans, new technology, or any information that's not available to the public. This type of agreement does not restrict where an employee can work after leaving the current employer, but it can limit the information the employee can use at the new organization.

Both of these agreements are used occasionally by employers when hiring interns, but non-compete agreements may not be as enforceable as non-disclosure agreements. The reason is interns don't usually enter the job market right when the internship ends, they may not have gained the expert knowledge that regular employees have, they aren't employed long enough, and aren't involved in a high enough level of decision-making. Therefore, the courts usually do not restrict graduating students from working for a certain amount of years, unless there is strong evidence to do so.

## **Unemployment:**

Since internships are designed to extend for a specific amount of time, the interns are hired for a certain purpose, and this is not an expectation that the position will continue after the specified end date. Also, interns would not qualify for unemployment benefits after leaving the organization. Developing a learning agreement with specific start and end dates, as well as expectations for the position, is the best way to safeguard your organization against unemployment claims by past interns (Inkster & Ross).

## **Civil Rights:**

Interns fall under the same guidelines as regular employees when it comes to civil rights and nondiscrimination. Employers are not allowed to select interns based on race, ethnicity, age, gender, etc., nor can they discriminate against interns with disabilities. Interns with disabilities must be provided reasonable accommodations to perform their essential job functions as required by the Americans with Disabilities Act. Interns are also protected by harassment laws, just as regular employees are (Inkster & Ross).

## **Posting an Internship Opportunity:**

Visit the Mesa College webpage; select Student Services; select Career Center; select Posting Board. You will find the directions to post your internship opportunity on the Posting Board. You may also contact the Career Center at (619)388-2777.