

Bonus chapter 03: Using student interns

Many creative teams include student interns. This is especially true in companies that are looking for ways to reduce expenses. In a design firm, payroll is always the largest expense by far. One popular strategy for reducing payroll costs is to seek out free labor in the form of student interns. However, design firm owners need to be aware that a number of federal and state laws apply to unpaid internship programs. If certain criteria are not met, then interns must be paid.

A complaint by an intern seeking compensation can trigger an audit by the Wage and Hour Division of the U.S. Department of Labor (DOL) or your own state's Division of Labor Standards. If a complaint is filed and an audit reveals a significant violation of the law, the penalties against your design firm can be severe. You may be on the hook for double the unpaid amount owed to that individual worker (and any other workers in the same situation) plus court costs and legal fees.

Because of these potential problems for employers, an intern program should not be launched or administered in a haphazard fashion. This chapter will help you understand the essential legal requirements that must be met.

Definitions

Let's start with some definitions. What do we mean by an internship? An intern is a professional in training. An intern does not yet have the knowledge and experience necessary to be fully useful in the studio. Internships provide supervised hands-on work experience within a student's field of interest. Internships are short-term (usually one semester), and the work schedule is typically part-time so that it does not interfere with class attendance.

An intern is not a volunteer. DOL regulations define a volunteer as an individual who provides services to a nonprofit organization or public agency for civic, charitable, or humanitarian reasons. An intern working at a for-profit company does not fit this definition.

It's also important to note that an intern is not a freelancer. The nature of the work relationship does not meet Internal Revenue Service guidelines for independent contractor status (for more information on this, see Chapter 03).

Setting up an unpaid internship can be great for your company's finances, but, at the same time, there is a downside for the student: no compensation for labor, no staff benefits such as paid vacation time, and no unemployment benefits after the internship has ended.

Lastly, an internship is not an opportunity to take advantage of anyone. In fact, federal and state laws are in place to protect workers from potential exploitation.

Federal requirements

The nature of your company's internship program must be primarily educational. If it's not, you run the risk of being found in violation of the Fair Labor Standards Act (FLSA), which applies to all companies with two or more employees and annual sales of at least \$500K. If the program is not essentially educational, your unpaid interns will be classified as employees, meaning (among other things) they are entitled to the federal minimum wage. The FLSA establishes six requirements for unpaid internships:

1. Although an intern may be trained using equipment and procedures specific to your particular firm, the overall internship experience must be equivalent to what the student would be able to gain in a vocational school. In other words, the student could conceivably pay to receive very similar training elsewhere.
2. An intern cannot displace a regular employee. Instead, the intern must work under the close supervision of your regular staff members.
3. An internship cannot carry any guarantee of a future job. The intern is not necessarily entitled to become an employee at the conclusion of the training period.
4. The employer and the intern must both understand that the intern is not entitled to wages for the time spent in training.
5. Training should be primarily for the benefit of the intern.
6. The employer provides training but does not derive any immediate advantage from the activities of the intern. In fact, the training may actually impede normal operations on occasion.

Ideally, your unpaid internship program should meet all six of these criteria. In practice, however, the last requirement can be a bit of a challenge. For the experience to be educationally valid, an intern needs to participate actively in the work of the company. At what point does this constitute an "immediate advantage" for the firm? Several DOL rulings seem to suggest that as long as the internship is a prescribed part of an educational curriculum and is predominantly for the benefit of the student, the mere fact that the employer receives some benefit from the intern's services does not make the intern an employee for the purposes of wage and hour law. In short, an assessment will be made about the spirit of the internship program as a whole.

State requirements

In addition to the federal requirements we've been discussing, some individual states have imposed restrictions of their own. Two examples are California and New York. For details, you need to check with the Division of Labor Standards in the state where you are located. Some states require proof that the unpaid intern is receiving academic credit for the work. Some also specify that internships are subject to state workers' compensation insurance requirements.

Paid employees

If your internship program does not adequately meet federal and state requirements, then the intern will be a paid employee. The level of pay will, of course, be lower than that of more experienced staff members. However, the FLSA requires you to pay at least the federal minimum wage (currently \$7.25). Don't forget that some states and cities have additional pay requirements (for example, the current minimum wage in California is \$8.00 per hour, but in San Francisco the current minimum rate is \$9.79).

Paid interns are also entitled to overtime pay when they work long hours. Interns do not qualify for the “Creative Professional” exemption that applies to more experienced designers. To be exempt, an employee must be involved in work requiring some degree of autonomy and self-direction. Fully trained professionals work without close supervision and consistently use independent judgment. This is not the case with any intern.

Mutual benefit

A well-thought-out internship program creates a relationship between the design firm and the student that is mutually beneficial.

For the student, an internship is a great way to learn by doing. It provides exposure to the work environment and the complex challenges of “real-world” design projects. It enhances the student’s résumé and presents a valuable opportunity to gain references and network contacts. It also assists in the completion of a college degree by providing either pay or academic credit.

At the same time, design firms benefit greatly from being exposed to fresh ideas and new perspectives. And, yes, unpaid internships also help reduce payroll costs!

A final note: This chapter shares general information about legal requirements for internship programs. If you have specific questions about how state and federal statutes might apply to your particular situation, you will of course want to get expert guidance from an attorney who specializes in employment law.

For more information

For additional background information on these issues, you may want to spend some time on the following government Web sites.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

- *FLSA and minimum wage requirements:*
www.dol.gov/whd/flsa/index.htm
There are also links to state labor offices.
- *Federal overtime requirements:*
www.dol.gov/whd/overtime_pay.htm
Download fact sheet 17D for an explanation of the “Creative Professional” exemption.

U.S. Department of the Treasury
Internal Revenue Service

- *Independent contractor guidelines:*
www.irs.gov
Download publication 1779 “Independent Contractor or Employee.”