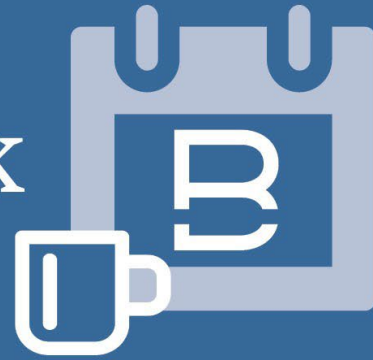


The Work Week

Bassford Remele Employment Practice Group



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The Perils of Paid and Unpaid Internships

[Wynne C. S. Reece](#)

For as long as businesses have been around, owners and management have experimented with different worker structures, among them – the internship. Internships continue to be a desirable facet of the worker team, however, interestingly enough, the intent to pay those interns sparks a flurry of confusion and considerable, likely inadvertent, missteps for many. As we head into summer with internships being more prevalent with colleges and universities out of session, understanding the differences between paid and unpaid internships is crucial for businesses that want to leverage these opportunities while adhering to legal and ethical standards.

Implementing internships can be challenging to navigate due to stringent state and federal labor laws and regulations, with the primary issue lying in ensuring that the internship program meets all the legal criteria to avoid being classified as exploitative or in violation of those laws and regulations. What many don't realize is that from a legal, logistical, and operational perspective, a paid internship is effectively employment. Conversely, while unpaid internships do not offer monetary compensation, they do require educational and experiential benefits provided to the intern and have their own set of criteria to follow to ensure they are not exploitative. To better understand this difference, we look further at a few of the distinguishing factors.

Paid internships generally meet the criteria that define an employment relationship and thereby must be treated as such internally. First, paid interns perform tasks that are often integral to the operations of the business, akin to regular employees. They engage in activities that contribute to the productivity and profitability of the business, which means their roles are not merely observational or educational but involve substantial, practical work. Moreover, businesses typically have set standards and objectives for interns to achieve, and their performance is monitored and evaluated in a manner similar to that of other employees. This accountability and the expectation of a certain level of work output underscore the

employee-like nature of paid internships. This type of contribution mirrors the responsibilities of standard employees, thereby positioning paid interns within the employment framework.

Second, paid interns receive compensation for their work, aligning with the definition of an employee under employment laws. In Minnesota, paid interns are subject to the same minimum wage and overtime laws as regular employees. This means that businesses must pay interns at least the minimum wage for all hours worked and overtime for any hours over 40 in a week. Businesses also must comply with [Minnesota's new earned-sick-and-safe-time laws](#) for paid interns as well. If a business fails to comply with these wage laws, it could face legal repercussions, including fines and back pay. This financial remuneration implies that the intern's work has tangible value to the business, further blurring the line between internships and regular employment.

Third, employment laws are designed to protect individuals who provide labor in exchange for compensation, ensuring they receive fair wages and work under safe conditions. Paid interns, by receiving compensation, fall under the purview of these laws, which mandate minimum wage, overtime pay, and other employment benefits such as workers' compensation and unemployment insurance. These protections extend to interns to ensure they are treated fairly and not exploited, just as they are for traditional employees.

Conversely, unpaid internships in the for-profit sector must meet specific criteria to ensure they are lawful. First, unpaid interns should receive training similar to that given in an educational environment. A common misconception is that offering academic credit can justify the unpaid nature of an internship. While academic credit can be a component of an unpaid internship, it does not alone fulfill the legal requirements. The educational aspect must be the primary focus, and the internship should provide a meaningful learning experience that complements the intern's academic pursuits. Business owners must collaborate with educational institutions to ensure the internship aligns with academic standards and provides substantial training rather than mundane or clerical tasks.

Second, unpaid interns should not displace regular employees. In practice, businesses should not have unpaid interns taking on tasks that an employee would otherwise take on. By replacing paid positions with unpaid interns, businesses run afoul of labor laws and can be penalized for misclassification in addition to creating an uneven playing field, disadvantaging those who cannot afford to work for free, thus perpetuating socioeconomic inequality. Should there be an instance in which a task fits squarely under the educational component required of unpaid internships, the business would be wise to work with its legal team to shore up the other parameters of the internship to mitigate potential pitfalls.

Third, the business should not derive immediate advantage from the intern's activities, meaning that the primary purpose of the internship should be educational and beneficial to the intern, rather than serving as free labor for the company. This principle ensures that interns are gaining valuable hands-on experience and learning opportunities that contribute to their professional development, rather than performing tasks that directly benefit the business's operations. The focus should be on training and mentorship, setting the bar to protect interns from exploitation, and ensuring that businesses do not circumvent fair labor practices.

While business owners surely recognize the long-term benefits of offering paid internships, they must also ensure that they are conducting them in a legally compliant manner to avoid potential legal ramifications. If a business in Minnesota misclassifies an intern as such when the role should be considered employment, it risks significant legal and financial penalties. Specifically, the business may, amongst other things: (1) be

sued for back wages, meaning the business would have to pay the employee for all the unpaid wages, often with additional penalties; (2) have to compensate the employee for the cost of these benefits, which can be substantial; (3) face significant penalties from the IRS and be required to pay back taxes, interest, and fines; and (4) pay legal fees and other costs associated with defending against these actions. As one can imagine, this can lead to a loss of business and difficulties in hiring and retaining good employees. As is hopefully apparent, misclassifying an employee as a paid intern to save money or avoid legal obligations can backfire severely.

Ultimately, businesses are often left with the option to either pay an intern as they would an employee and comply with employment laws and regulations or bring on an intern that may not be of any immediate benefit to the business and detract from productivity at times. Although many businesses shy away from paid internships once they recognize the employment requirements, the above outline of differences should be carefully weighed by businesses before ruling either type of internship out. Paid internships can serve as effective pipelines for future full-time employees, reducing recruitment costs and improving retention rates. By investing in paid internships, businesses not only comply with legal standards but also cultivate a committed and diverse workforce. Conversely, unpaid internships can be extremely beneficial in their own right, including investing in the community, and public relations and recognizing the different benefits a business might derive for incorporating a teaching component. In either instance, it is understandable as to why internships are still regarded as a desirable facet of the worker team.

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