

CATALYST

Business EXPERTise

Recognized and respected issue experts from PA Chamber member companies answer businesses' most frequently asked questions about HR, Tax, Communications and Environmental concerns, compliance and best practices.

HR

Our company is offering an unpaid internship this summer, providing work experience as opposed to compensation. Should we be concerned with related liabilities?

Actually, yes. The number of lawsuits filed by unpaid interns in recent years has increased, so you are taking a significant risk if you decide to bring an intern into your business without compensation. Under the federal Fair Labor Standards Act, most internships that are offered by for-profit businesses are viewed as “employment” under federal law. Therefore, an intern must be paid in conformity with the minimum wage and overtime pay requirements of the FLSA.

There is only one, very narrow exception. If you can meet the six-factor “trainee” test, as defined by the Department of Labor, then an employment relationship does not exist. To pass the test, all six of the following factors must be satisfied:

1. The internship, even though it includes actual operation of the facilities of your business, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. You derive no immediate advantage from the activities of the intern, and on occasion your operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. You and the intern understand that the intern is not entitled to wages for the time spent in the internship.

Duties performed by interns that have triggered liability under the FLSA are less than what you might expect and may include such benign activities as making copies, preparing expense reports and taking and distributing lunch orders. There are certainly



Ronda O'Donnell
Marshall Dennehey

ways that your internship can be modified to comply with federal law as an unpaid internship—but unless you go into the summer with that awareness, your company might find itself on the wrong side of an administrative complaint or lawsuit filed by the unpaid intern. ♦

■ **Ronda O'Donnell** is a shareholder and chair of the Employment Law Practice Group at Marshall Dennehey Warner Coleman & Goggin. She focuses her practice on the representation of employers and has handled hundreds of cases covering a full range of employment law issues in federal and state courts and before the administrative agencies. She also advises and trains employers on compliance with local, state and federal employment laws. She can be reached directly at 215 575-2697 or at rkodonnell@mdwvcg.com.