



Employing Interns

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Scope—This article provides an overview of employing interns. The article discusses pragmatic reasons for employing interns, practical considerations with employing interns and compliance with U.S. law concerning internships. The legal focus is on the federal Fair Labor Standards Act; the practical focus is on the reasons why internships, if properly managed, can create a win-win situation for interns and employers.

Overview

This article presents a conceptual, legal and practical treatment of employing interns. It highlights the business case for offering internships, including the benefits for both the employer and the intern. The article then discusses HR's role in implementing and managing an internship program, as well as global, communication, technology and legal issues.

The principal legal issue with internships is whether the organization must pay the intern. For private-sector employers in the United States, the answer is almost always yes. Generally, the intern should be paid at least minimum wage as well as overtime. The U.S. Department of Labor (DOL) recognizes very narrow exceptions to the requirements of the Fair Labor Standards Act (FLSA) for private-sector internships in for-profit organizations. Public-sector employers and nonprofit organizations, however, are given greater latitude in determining whether to pay interns anything at all. The article provides a thorough discussion of this topic, with particular emphasis on FLSA compliance.

Background

Historically, the concept of internship originates from the labor movement concepts of apprenticeship back to the guilds of the Middle Ages. It is a tried-and-true way of training personnel and of picking people for future employment. It is a symbiotic relationship between the intern and the employer.

Typically, interns are young people in college or high school. However, interns may also be older persons seeking new careers, ways to help their communities or interesting ways to spend their time in semi-retirement.

Internship is a longstanding means by which individuals can improve their basic knowledge, skills and abilities—known as KSAs—to obtain gainful employment in a particular field. Interns can benefit from a combination of networking opportunities and specialized education. In turn, employers can benefit from internships by obtaining relatively inexpensive labor and, more importantly, by tapping into a pool of potential employees about whom the employer knows much more than can be derived from resumes or job applications. In addition, offering internships can give an employer brand recognition and status in the community, and it can provide the impetus for an organization to evaluate its human resource functions. Ideally, internships are a win-win arrangement for both interns and employers.

Business Case

The business case for creating an internship program is strong:

- Employers of interns obtain relatively inexpensive labor at the cost of giving training to the interns. Interns typically work for a short period of time without benefits. See Summer Interns and the ACA (<https://blog.shrm.org/blog/summer-interns-and-the-aca>).
- Employers acquire ready access to a pool of potential hires.
- Employers obtain much better knowledge of prospective employees' KSAs by watching the interns in action than by simply reading resumes or job applications.
- Employers can gain brand recognition and improved community relationships through internship programs, as well as improve employee morale.
 - An employer can attract positive attention from the news media reporting on the start and finish of the internship program for high school or college students, introducing the interns and discussing how their nascent talents could lead to employment at the organization in the future.
 - Often, interns are related to current employees. The possibility that a relative could land an internship with an organization can boost its employees' productivity and job satisfaction.
 - An internship program can be a key component of an organization's diversity efforts.

Overall, an employer's internship/outreach program could turn out to be the source of its next great employee. Just as an internship program can be a plus for employers, it can, and should, be of great benefit to interns:

- Interns can gain a real-world view inside a particular industry or job before they devote significant time and money to qualify themselves for such positions. This may help them eliminate wasteful "false starts" in their educational and career choices.
- Interns can gain realistic expectations about workplace demands and rewards.
- By acquiring organizational knowledge, an intern can be at a competitive advantage over job applicants without internship experience.
- Similarly, an internship can be viewed as an expanded job interview; the intern has ample opportunity to display his or her best attributes to a potential employer over an extended period. The typical job applicant, on the other hand, may have only two or three hours of time with the organization before the hiring decision is made.
- Even if an internship does not blossom into a regular position with the organization, the intern will enlarge his or her network of contacts in the working world and will probably be able to add a few names to his or her list as references when applying for positions elsewhere.

See *How to Do Internships the Right Way* (www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/how-to-do-internships-the-right-way.aspx).

HR's Role

HR's role concerning internship programs depends on the situation. If an organization has no internship program, then HR's first task is to convince upper management of the wisdom of establishing one. Making that case will entail coming up with some specifics on organizational needs, wages, hours, policies, legal issues and metrics. The specifics of a new internship program will probably focus mostly on how it would benefit the employer in the short term. With established internship programs, the specifics will center on the quality of the experience for the interns and the strategic benefits for the employer over the long term.

HR is the functional unit that is primarily responsible for the effective management of an internship program and should take a hands-on approach to ensuring a proper balance between the employer's interests and the intern's. Periodic meetings should be held with each intern and the intern's supervisor to assess how the internship is going. Such meetings are similar to the standard exit interview except that they are ongoing. These conversations will give HR valuable insight into the human relations within an organization—insight that can go

well beyond the scope of the internship program itself. An intern may tell HR details about the working experience that regular employees would be reluctant to talk about—such as bullying, harassment and dishonesty. Similarly, an intern may bring to light qualities in supervisors that HR and the supervisor's supervisor were only marginally aware of, such as compassion, ethical behavior, diligence, depth of knowledge, loyalty and creativity. An internship should be similar to a mentoring relationship.

It is the job of HR to use the feedback received from interns and supervisors to modify internship policies and procedures as necessary, to continually establish the business case for internships to upper management, and to continually improve the internship program. See Tips for Recruiting Summer Interns (www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/tips-recruiting-summer-interns.aspx).

Legal Issues

There are serious legal issues associated with employing interns, which are also discussed in further detail later in this article.

First, employers should be careful not to violate state or federal laws regarding underage persons. All states have child labor standards, and age limitations differ from state to state.

Once an employee is age 18, there are no federal child labor rules. See FLSA Child Labor Rules Advisor.

(<https://webapps.dol.gov/elaws/whd/flsa/cl/>)

Similarly, employers should be careful not to discriminate illegally based on age against older applicants for internships, who may have been laid off or are seeking different experiences in their retirement years. Older workers may be just as qualified as, or even more qualified than, other applicants in satisfying an organization's goals for adopting an internship program in the first place.

Second, employers should be aware of state and federal laws on minimum wage and overtime. State rules are often more generous than federal law on payment of minimum wages and overtime. The more generous rule under the particular circumstances should always be followed.

The rules applicable to interns are likely to be different for government and private employers, with private employers having stricter rules. In the public sector and the nonprofit sector, unpaid internships are generally permissible. See How to Determine if an Individual Is a Volunteer or an Employee (www.shrm.org/ResourcesAndTools/tools-and-samples/how-to-guides/Pages/volunteeroranemployee.aspx), and Unpaid Internships: What Employers Need to Know (www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/unpaid-internships-new-dol-intern-test.aspx).

Third, interns are likely to perceive that they are not subject to the employer's policies even if they sign documents saying that they are. Similarly, supervisors may think that the workplace rules for regular employees are not necessarily applicable to interns. Internships may be abused by interns and supervisors alike. Generational differences between interns and supervisors can lead to claims (meritorious or not) of sexual harassment, invasion of privacy and defamation. Employers should maintain order in their operations—and internships should be no exception. Periodic meetings between HR and interns and between HR and supervisors can help prevent inappropriate conduct or stop it before it gets out of hand. See Reduce Summer Interns' Vulnerability to Harassment (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/summer-interns-harassment.aspx).

Fourth, internship can be a path of illegal immigration and employment in the United States if interns overstay their visas. Employers should be careful to comply with all federal and state immigration laws when employing interns.

Communications

Communications can be an area in which employers can benefit, but also an area in which they can make mistakes. They should pay careful attention to drafting policies and procedures, as well as public announcements, regarding internships. An organization will not want to be seen as reneging on promises made to interns or as taking advantage of them. Clearly identifying what the program offers and how

interns will benefit will help attract great candidates. See [Meaningful Work Creates Meaningful Internships \(www.shrm.org/resourcesandtools/hr-topics/organizational-and-employee-development/pages/meaningful-work-creates-meaningful-internships-.aspx\)](http://www.shrm.org/resourcesandtools/hr-topics/organizational-and-employee-development/pages/meaningful-work-creates-meaningful-internships-.aspx).

Metrics and Technology

At the outset of any internship program, it is important to establish a framework for determining whether the internship program has been successful. This is the realm of metrics. Here are possible goals of an internship program:

- Identify one intern whom the organization would like to hire as the best candidate for a regular position.
- Identify one intern whom the organization would like to hire as the best candidate to fill a position temporarily during a leave of absence by a regular employee.
- Increase the number of positive press reports mentioning the organization during a specific period of time.
- Enhance the organization's ranking in a best-places-to-work survey.
- Obtain candid feedback about organizational problems and overlooked opportunities and talents.

The return on investment of an internship program will depend on the criteria the organization states and the integrity of its data. A human resource information system—HRIS—or a generic spreadsheet computer program may be useful in establishing the metrics needed.

The goals of an internship program should follow the SMART paradigm. The goals should be:

- **S**pecific, clear and understandable.
- **M**easurable, verifiable and results-oriented.
- **A**ttainable.
- **R**elevant to the mission.
- **T**ime-bound with a schedule and milestones.

Global Issues

In affluent countries such as the United States and Australia, it is common for young people to reside temporarily in another country, sometimes by means of an internship. Such international internships are particularly popular with young interns. They can gain the benefits of a domestic internship while also exploring another culture. Occasionally, the internship may result in a job in the other country.

Sometimes, however, the temporary residence involves persons from other countries coming to the United States on temporary visas; those who overstay their temporary visas become "undocumented workers." Employers should be wary of such situations and should certainly not promote them. Compliance with federal and state immigration laws is a key requisite of employing interns from other countries. See [What Employers Need to Know About the J-1 Visa for Interns and Trainees \(www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/j1-visa-interns-trainees-hr.aspx\)](http://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/j1-visa-interns-trainees-hr.aspx) and [What Employers Need to Know About Working with J-1 Visa Sponsors \(www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/employers-working-with-j1-visa-sponsors.aspx\)](http://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/employers-working-with-j1-visa-sponsors.aspx).

FLSA Compliance

The FLSA defines the term "employ" broadly as including to "suffer or permit to work" ("suffer" is a synonym for "allow"). Technically speaking, the FLSA does not define or explicitly recognize the existence of "interns." Rather, to avoid the FLSA's requirements for minimum wage and overtime, the worker must qualify as either a "volunteer" or a "trainee." Since the concept of volunteer does not fit well with the for-profit sector, the DOL provides a "primary beneficiary test" to determine whether an intern in the for-profit sector qualifies as a trainee to be exempt from the FLSA's minimum wage and overtime provisions.

In January 2018, the DOL provided updated guidance to reflect the following seven criteria to identify the primary beneficiary in determining whether an employment relationship with an intern or student exists:

1. Both parties understand that the intern is not entitled to compensation.
2. The internship provides training that would be given in an educational environment.
3. The intern's completion of the program entitles him or her to academic credit.
4. The internship corresponds with the academic calendar.
5. The internship's duration is limited to the period when the internship educates the intern.
6. The intern's work complements rather than displaces the work of paid employees while providing significant educational benefits.
7. The intern and the employer understand that the internship is conducted without entitlement to a paid job at the internship's end.

According to the DOL, "courts have described the 'primary beneficiary test' as a flexible test, and no single factor is determinative.

Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case."

See Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act (<https://www.dol.gov/whd/regs/compliance/whdfs71.htm>) and Will DOL's New Intern Test Revive Unpaid Interns? (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/intern-employee-dol-new-test.aspx)

The simple solution is to just pay the intern a legal wage. Doing so will save the for-profit organization a lot of risk and concern about whether a particular internship program complies with the FLSA or comparable state law. In addition, paying interns helps teach them the realities of mandatory withdrawals from paychecks, gives them a tangible benefit for their labor and probably improves the quality of their work

Clearly, an internship should not be used to displace a regular employee or to take advantage of a person seeking KSAs as a way to obtain free or low-cost labor for the organization. Ideally, an internship is a symbiotic relationship.

Conclusion

Employers with unpaid internship programs should develop standard disclosure forms to be signed by prospective interns acknowledging, among other things, that no job is being offered in connection with the successful or unsuccessful completion of the internship. The internship should have specific start and stop dates. In addition, the employer should obtain the intern's signature on a document stating the intern understands that he or she is participating in a valid internship and therefore will not be entitled to wages (or only to minimum wages) for the time spent in the internship. On this matter, the employer should probably consult with legal counsel, and legal counsel will probably want the document to include much more detail. The greater the number of interns involved, the greater the risk if the details are overlooked.

Misclassification of interns as trainees rather than employees could result in the interns being deemed employees eligible for Social Security withholding and matching, unemployment insurance benefits and workers' compensation. The tax ramifications for an organization having "employees" for whom FICA taxes have not been withheld and paid can be substantial, including a 100 percent penalty for FICA withholding not actually paid by the employer.

For large-scale and ongoing internship programs in which the employer wants to pay less than the applicable minimum wage or overtime, legal counsel should be consulted.

Templates and Tools

Samples

Internship: Model Work-Study Internship Program (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/1cms_002184.aspx)

Internship: Intern Evaluation Form (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/cms_002186.aspx)

Internship: Student Evaluation Form (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/cms_002182.aspx)

Intern Hiring Policy (www.shrm.org/ResourcesAndTools/tools-and-samples/policies/Pages/cms_016307.aspx)

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