

## BEWARE OF THE PITFALLS OF UNPAID INTERNSHIPS

*By: John C. Cashen, Member, Workplace Law Practice Group*

Summer break coincides with increased inquiries from students about the availability of internships. We remind employers that internships cannot be blithely equated with free temporary help. The U.S. Department of Labor (“DOL”) enforces the following criteria for an intern of a for-profit employer to not be considered an employee entitled to minimum wage:

1. The training, even though it includes actual operation at the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees or students.
3. The trainees or students do not displace regular employees, but work under their

close observation.

4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion its operations may actually be impeded.
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

These factors create a high hurdle. For example, the intern’s performance of clerical tasks or manual labor might run afoul of factor 4 above. In short, unless a for-profit employer is involved in a program in

partnership with a college or university which may facilitate satisfaction of the above factors, such employer should pay at least minimum wage to interns.

While cautioning against a blanket exemption, the DOL has indicated in Fact Sheet #71 that the above factors do not apply to non-profit organizations: “Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.”

The take-away is that there cannot be an expectation of compensation, a condition that should be established by written acknowledgement from the intern at the outset of the internship. However, if a non-profit employer pays a stipend to the intern, the stipend cannot exceed a reasonable approximation of the expenses incurred by the intern. If it does, the intern will be considered an employee entitled to minimum wage.



**About the Author.** *John C. Cashen represents employers in all aspects of employment law and related litigation. He served as chairperson of the Firm’s Workplace Law Practice Group for ten years. John assists clients facing charges of discrimination, sexual harassment, wrongful discharge, Whistleblowers’ Act violations and similar claims in federal and state courts, administrative proceedings and arbitration hearings.*

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