

Summer Interns: Volunteers or Employees?



By Jennifer Chandler Hauge

Resource Type: Risk eNews

Topic: HR Risk and Employment Practices, Volunteer Risk Management

Now that summer is around the corner, many nonprofits are fortunate to have lined up students or recent grads as “interns.” Such summer help is greatly appreciated by nonprofits but could come at an unexpected cost if the nonprofit is paying the interns and is not prepared to treat them as employees.

Internships of short duration, such as one or two weeks, are less likely to trigger an employment relationship but if an intern receives any compensation the issue of employee classification is raised: Should the intern be treated as an employee?

Many nonprofits find themselves competing with for-profits for the most accomplished summer interns and offering a stipend may serve as a significant recruitment tool. If your nonprofit needs to offer a stipend, remember that paying interns more than a nominal stipend creates the risk that the intern will be found to be an employee and consequently that the intern should be provided with minimum wage and paid on a normal paycheck schedule (not a lump sum payment at the end of the summer) with appropriate payroll taxes withheld.

In order for an intern not to be classified as an employee, the internship should emphasize the learning opportunities offered by the experience, such as exposing interns to the nonprofit’s mission and activities and providing valuable mentorship opportunities.

The U.S. Department of Labor has created a special classification for interns (the DOL uses the word “trainee”) who may receive a nominal stipend for their work without being classified as employees. The intern must satisfy a six-part test as follows:

1. The training the intern receives during the internship, even though it includes actual operation of the nonprofit’s facilities or program, is similar to what would be offered in a vocational school.
2. The primary benefit of the training/internship is for the intern.
3. The trainees don’t displace regular employees but work under close observation.
4. The nonprofit employer derives no immediate advantage from the activities of the interns, and on occasion, its operations may actually be impeded.
5. The intern is not guaranteed a permanent job at the end of the program.
6. The nonprofit employer and intern understand that the intern isn’t entitled to wages for the time spent in the internship.

[The DOL derived these six criteria from the US Supreme Court case, *Walling v. Portland Terminal Co.*, 330 U.S.

The fourth factor, that the internship primarily benefits the intern rather than the nonprofit may seem problematic; however, several DOL rulings and opinion letters suggest that as long as the internship is a integrated into a student's curriculum, or part of a school's educational process, the fact that the employer receives a benefit for the student's services does not make the student an employee for purposes of wage and hour law. The DOL's position is that the summer internship should "predominantly" benefit the intern. The factors the DOL will consider are described in several opinion letters posted on the DOL web site including a letter that describes a nonprofit's program to place interns with local businesses for job-training, and another opinion letter that focuses on the short-term duration of the internships and the school-sponsored nature of the educational experience for the interns.

Other factors to keep in mind so that your interns are properly classified as interns rather than required to be paid as employees are:

- The work performed is an integral part of the intern's course of study, major or concentration in school.
- The intern receives academic credit for the work or the work is required for graduation (such as community service hours).
- The intern will prepare a report of his/her experience and submit it to a faculty member.
- The nonprofit has received a letter or some other form of written documentation from the intern's school stating that it sponsors or approves of the internship and that the internship is educationally relevant.
- Learning objectives are clearly identified in a position description for the internship or in an announcement to advertise the internship's availability.
- The intern does not perform the same work that other employees perform.
- The intern has an assigned mentor at the nonprofit and shadows the mentor or a staff member of the nonprofit supervises and provides feedback for the intern on his/her performance.
- The nonprofit provides an opportunity for the intern to learn a skill, operational process, or other practical business function.
- There is true educational value in the work performed by the intern that is related to the intern's major or course of study.
- The nonprofit does not guarantee a job to the intern upon completion of the internship.

The Nonprofit Risk Management Center welcomes your questions and comments at info@nonprofitrisk.org or 703.777.3504.