LEGAL SPOTLIGHT

Unpaid Internships: Does Your Program Pass the Test?

At a university, unpaid internships at the institution itself or made available through partnerships with private companies, are commonplace. However, recent class action lawsuits brought by unpaid interns against companies such as Donna Karan, NBC Universal and Conde’ Nast Publications have led to a heightened awareness about the legal pitfalls associated with unpaid internships and the importance of ensuring that these arrangements comply with the law.

Under the Fair Labor Standards Act (FLSA), an unpaid internship must meet certain requirements in order to be exempt from the law. While the determination of whether an internship or training program is excluded from minimum wage and overtime requirements will depend on the facts and circumstances of the particular internship program, these six criteria are applied:

- The internship experience is for the benefit of the intern;
- The intern does not displace (or replace) regular employees, but works under the close supervision of existing staff;
- The employer providing the program derives no immediate advantage from the activities of the intern (in fact, on occasion, the employer’s operation may actually be impeded);
- The intern is not necessarily entitled to a job at the conclusion of the internship; and
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

Does Your Intern Program Pass The Test?

If the above-listed criteria are met, the unpaid internship is excluded from the definition of “employment” under the FLSA such that minimum wage and overtime provisions do not apply. Out of the factors to be examined, possibly the most significant will be whether the internship experience is for the benefit of the intern, and not the employer. The former unpaid intern who brought suit against Donna Karan alleges that he was told the job would be a “great learning experience,” but found himself working 16 hours a week to do things such as fetch coffee and straighten up fashion closets.

Most unpaid internships offered through universities are designed and implemented to complement and enhance the student’s educational experience. Unpaid internships offering course credit reflect that focus and are more likely to be viewed as benefitting the intern. However, with the FLSA’s broad application and the publicity associated with increasing litigation, it may be a good time to take a look at whether your department’s unpaid internships pass muster.

For more information, refer to the U.S. Department of Labor [http://www.wagehour.dol.gov].

If you have questions about an unpaid internship, please call the Office of General Counsel at (919) 515-3071.
**Political Activity by NC State Employees**

As election season approaches, it is helpful for NC State employees to know what types of political activities are not permissible under the law. Employees may not:

- engage in campaigning or other political activity (i.e. fundraising) during work time;
- use the authority in his or her position at NC State to support or oppose a candidate, party or issue in the election;
- use state funds, equipment or other resources to support or oppose a candidate, party or issue in an election;
- promise a reward to another state employee or applicant for employment in order to gain support or a contribution to a candidate or party (criminal penalty for violations);
- threaten the employment of another state employee or applicant for failure to support or contribute to a political candidate or committee (criminal penalty for violations).

In addition, employees may not use Community Service Leave (CSL) to work at the polls or to engage in other political activities related to the elections. Employees can use CSL if they are volunteering to work inside the polling to facilitate the voting process for the state or local Board of Election.

In other words, employees cannot use CSL for handing out campaign brochures, transporting voters, conducting voter registration or any other partisan political activity. Employees engaged in these activities should use other leave (i.e. annual, bonus, special) to cover the time off.

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**Myth Busters: The Umstead Act**

Every so often, the Office of General Counsel will field a question from someone on campus pertaining to The Umstead Act. The Umstead Act is actually a criminal statute which makes it a misdemeanor for a state agency (including public universities) to sell goods or services in competition with private business. Though there is no private right of action under the Umstead Act, injured parties may seek injunctive relief or a declaratory action that a public agency has violated the act. There are a number of exceptions to the Umstead Act, and there are a number of exceptions that are specific to NC State. The most important exemptions from the Umstead Act for NC State include the University Bookstore, Dining, Student Health Center, Centennial Campus operations, sale of Howling Cow ice cream and other dairy products at university owned facilities, and activities that further the mission of the university.

For more information on the Umstead Act visit OGC’s [legal topic webpage](#).

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**Authors Guild Appeals Google Decision**

As anticipated, the Authors Guild has filed an appeal of the November, 2013 decision of Judge Denny Chin, to dismiss the case filed against Google for copyright infringement. The fight continues over whether Google’s scanning of more than 20 million books to date, without the authors’ permission, is fair use or, as the Authors Guild alleges, copyright infringement. The case has significance for university libraries and for scholars in big data research and data analysis.

In November, Judge Denny Chin, US District Court, Southern District of New York, dismissed the case against Google, and delivered an emphatic endorsement of Google’s scanning program. In a message to NC State libraries and community, Will Cross, Director of Copyright and Digital Scholarship, stated that Chin’s “opinion makes a powerful link between Google Books and the services of libraries” and that Chin “affirmed the transformative power of digitization to ‘give new life to out-of-print and old books that have been forgotten in the bowels of libraries.’”

It remains to be seen how the Second Circuit will rule on the appeal, but it is already prepar-