



Howling Counsel

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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 (even though it includes the actual operation of the facilities of the employer) is similar to training provided in an educational environment;

- 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 em-

ployer. 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.



SAVE THE DATE

OGC Cordially Invites You To Our Annual Open House . . . Pie Day!

March 14, 2014
2:00 - 4:00 p.m.
305 Holladay Hall

Meet the staff
Homemade pie tasting*
Pie judging

*Disclaimer: These pies are being made by the OGC staff. Eat at your own risk!!!

QUESTION OF THE MONTH

Can my office, department or division support a raffle to raise money?

No. State law limits the number of raffles that State agencies, including the university, may conduct. That limit is two raffles per calendar for the entire university. Raffles must be authorized by the chancellor or his designee. For further assistance with this matter, please contact 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/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 polls 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.

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 un-

der 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](#).

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.

missed 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.'"

ing to rule on a parallel case, Authors Guild v. Hathi Trust, which was argued in October 2013. In the Hathi case, the Authors Guild sued a collective of Google's library scanning partners. The District Court in that case had declared that it could not "imagine a definition of fair use that would not encompass the transformative uses made by the [Hathi Trust Project]".

In November, Judge Denny Chin, US District Court, Southern District of New York, dis-

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

