

Do you need to pay your interns?

Kerry Hudson, an intern who had been working on the My Village web site for two months, successfully sued TPG Web Publishing Ltd for the minimum wage and unpaid holiday. This follows a recent case brought by a BECTU member Nick Thomas-Webster against a production company. The question raised by these cases is should you pay your intern?

Work experience has become almost a necessity for any school leaver's entry into the job market. Whilst helping the younger generation, employers can, through their work experience/internship programme, spot future talent and save on recruitment costs.

The legal position

There is no legal definition of an intern and it can cover situations as varied as a 15 year old secondary school student's first workplace experience to project work undertaken by a recent postgraduate student. Typically, interns tend to be graduates and undergraduates in their final year of studies, school leavers and less commonly more mature workers undertaking a career change. The internship is not an apprenticeship. An apprenticeship is a form of training in skilled trades for a fixed term in order to obtain a set of qualifications and very different from an intern.

As there is no legal definition of internship, whether you have to pay your intern or not depends on the facts of each situation. If your intern is a worker and if he or she does not come under one of the exceptions available to certain government sponsored schemes or to volunteers, he or she will be entitled to the minimum wage and holiday pay.

A right to the minimum wage and holiday pay are both available to workers. A worker is defined by the Employment Rights Act 1996 as an individual who has entered into or works under a contract of employment or any other contract whereby **the individual undertakes to or performs personally any work or services** for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual. Full guidelines as to whether you have to pay for interns can be found on the business link website (<http://bit.ly/mB9qXT>). In a nutshell, if your interns don't just shadow staff but perform tasks and assume responsibilities that would be undertaken by an employee they should normally be paid.

The real picture

We asked Lewis Clark from GetWorkExperience.com which provides a placement service for students looking for internships (<http://www.getworkexperience.com/>), whether in practice, interns are paid. He explained that certain industries, such as accountants or lawyers, do tend to pay their interns. Other industries are not so good at paying, particularly those industries that are seen as glamorous, such as journalism and film production. It is not a surprise that the most publicised cases are cases in those industries. With youth unemployment rising, employers can pick and choose their interns with little incentive to pay them. Both the NUJ and BECTU condemn the abusive use of unpaid interns to fill real positions.

In its campaign against unpaid internships, 'Cashback for Interns', NUJ General Secretary, Jeremy Dear, says "A campaign drawing together trade unions and other organisations opposed to this cheap labour merry-go-round is now essential and we will play our part in the campaign to bring

exploitative employers to book, using minimum wage legislation and other legal means, to steadily change internship culture from one of exploitation to one of genuine learning opportunities.” (<http://bit.ly/mdyMLb>)

The Government has recently issued a strategy document called ‘Opening Doors, Breaking Barriers’ (<http://bit.ly/jBqnOY>). Nick Clegg introduced the strategy and it aims to tackle unfairness at every stage of life with specific measures to improve social mobility from the Foundation Years to school and adulthood. Section 5 of the document focuses on adulthood and talks at length about fairer access to paid internships being one of the cornerstones of social mobility. The Cabinet Office has also published a statement about the strategy document and includes the fact that “The Civil Service is leading by example by expanding its internships programme, and simultaneously bringing an end to informal placements so that parents with connections can no longer give their children an advantage. This should be a model for businesses to follow.” The full statement can be found at (<http://bit.ly/kZplQk>).

Is there a real risk if you do not pay your interns?

The outcome of the Hudson and Thomas-Webster cases is not surprising. What is more surprising is that fact that they were brought at all. Interns do not usually sue their employers for the simple reason that it is likely to be career suicide.

However, interns are not the only ones that can cause employers trouble. The strategy document states that HMRC are considering targeted enforcement in sectors where internships are commonplace, with a view to carrying out enforcement activity in 2011/12. There is also a free confidential helpline (0800 917 2368) available to unpaid interns who believe their minimum wage rights have been abused.

The business case for paying interns

Lewis Clark’s view is that if you wish to attract the best candidates into your business, bringing with them their skills and talents that your business could profit from, then it does not make commercial sense to limit your potential applicants to the limited few who can afford to work in an unpaid placement.

It is also very likely that paid interns will be more committed to their employer and their colleagues are more likely to delegate tasks to them if there are paid.

Finally, if you are concerned about confidentiality or copyright, the lack of any written agreement, which is likely if your intern is unpaid, is going to be very problematic when you are trying to protect those very fundamental business interests. Paying your interns under a proper contract of employment or freelance contract will give you that protection.

For more specific information or to discuss your requirements please call either Amanda Galashan or Julie Calleux at EmployEase on 0845 123 3741, or email us at info@employease.co.uk.

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