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Just A Helping Hand? The Potential Pitfalls of Hiring Unpaid Summer Interns

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Warm weather and summer are approaching, and so too is the end of the school year. As a result, many businesses may now or soon be considering bringing on a summer intern. Students in various industries and stages of education are likely seeking short-term employment. Employers need to be on alert, however, as even those seeking "unpaid" internships may qualify as "employees" under federal law, and thus be entitled to minimum wage and overtime pay.

The U.S. Department of Labor ("DOL") has issued specific guidelines concerning for-profit employers and internships. A company should carefully consider whether its summer interns will be considered "employees" for purposes of federal wage and hour laws, and thus subject to minimum wage and overtime requirements. The DOL has established seven key factors relevant to this determination:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The Fair Labors Standards Act ("FLSA") requires covered employers to pay employees, including summer interns who do not meet the above seven criteria, minimum wage, and overtime pay for hours worked over 40 in a week if the employee is not otherwise exempt from such requirements.

The DOL's test involves a careful balancing of the above-listed seven factors, which can, unfortunately, result in uncertainty in the application of the test among employers because no single factor is dispositive. Rather, the determination involves a balancing test, with all seven points taken into consideration in the totality of circumstances.

Importantly, the FLSA provides an exception for individuals, like summer interns, who are volunteering time for religious, charitable, civic, and/or humanitarian purposes with non-profit organizations. In such circumstances, the organization may not be required to pay a summer intern a mandated federal minimum wage and/or overtime. Generally, unpaid internships for the public sector and non-profit charitable organizations, where interns volunteer without expectation of compensation, are generally permissible.

The DOL's recent increased involvement in matters regarding classification of employees means that employers should exercise caution when hiring summer interns. Nexsen Pruet's Employment & Labor Law team is available to assist you or your business if any questions arise or if additional guidance regarding properly classifying employees and compliance with federal and state employment and labor laws is needed.