

Unpaid internships: The legal lowdown

By Simon Bond, employment lawyer at Higgs and Sons

The number and range of internships in the UK has increased considerably in recent years and interns are now a regular feature in many industries.

On the positive side internships offer organisations a way to access talent and provide interns with meaningful work experience that enhances their employability and skills. From the individual's perspective internships are seen as a foot in the door and way of getting experience - particularly in politics, sport, the media and fashion.

However, there has been much controversy that interns are being exploited and enable employers to avoid national minimum wage legislation. The TUC estimated in March 2010 that one in every three interns was unpaid. In 2013 Moritz Erhardt, an intern, died after allegedly working for 72 hours straight at the Bank of America's London office. The suggestion was that Mr Erhardt felt pressurised to succeed and that his long hours contributed to his death.

There is also concern that internships favour the socially advantaged and well-connected and that, as a result, they act as barriers to social mobility; this is of particular concern given that, according to ONS figures, recent graduates are more likely to work in a lower skilled jobs than a decade ago.

The legal status of volunteers and interns is not clear-cut. There is no legal definition of a volunteer or intern and the huge range of different types of working relationships make definitions difficult. That lack of clarity can also make it difficult for organisations to appreciate the legal obligations that they may owe to volunteers and interns. In particular the line between, on the one hand, an employee (with employment rights such as National Minimum Wage, Redundancy, Unfair dismissal etc) and a volunteer (with no such rights) can be a fine one indeed. For example:

- In the case of *Murray v Newham Citizens Advice Bureau*, Mr Murray claimed disability discrimination against the CAB. Mr Murray signed a volunteer agreement agreeing to work at specific times and for a minimum period; in return the CAB agreed to repay his expenses and provide him with basic training. A Tribunal decided that, on these facts, Mr Murray was employed under a contract of employment.
- On the other hand in the case of *Melhuish v Redbridge Citizens Advice Bureau* it was decided that an unpaid volunteer was not eligible to bring an unfair dismissal claim. The existence of required standards or guidelines to be followed by the volunteer and the provision of training courses did not create an employment relationship.

By way of further example of the complexities of hiring interns, the government has given the following illustrations of when interns are entitled to be paid the National Minimum wage (NMW):

- An intern takes up an internship at a newspaper business. He agrees orally that he will carry out research for 4 days a week and receives some payment for working the agreed hours. As he has an oral contract entitling him to a form of payment, he should be paid at least the NMW.
- An intern applies for a position at a record company. She is told that she will be paid "expenses only" for the first three months, but is promised that she will be taken "on the books" at the end of her "internship". She should be paid at least the NMW for the whole time she works at the record company. The promise of paid work is a form of reward for work undertaken.
- An intern receives "travel expenses" despite walking to work. He should be paid at least the NMW; paying a financial reward which is more than reimbursing genuine "out of pocket" expenses is evidence that he is a worker for the purposes of the NMW.
- An individual takes up an acting role and signs a form agreeing to work unpaid. He is promised a small percentage of any future profits, a DVD copy of the film and tickets to the company's releases for the rest of the year, but no salary. He should be paid at least the NMW. An individual cannot sign away their rights to the NMW. The fact that no cash changes hands is irrelevant as benefits in kind that have a monetary value count as a reward for NMW purposes.

In its response to the Taylor Review, published on 7 February 2018, the government promised to promote more high quality, paid internships, introduce new guidance and increase targeted enforcement activity to help stamp out "illegal and exploitative" unpaid internships.

The government has said that it intends to engage with sectors where unpaid internships are prevalent and bodies that represent interns, such as university careers services, to highlight and encourage good practice examples. It has also stated that it will seek to raise awareness of existing legislation among interns and employers through better information and by updating its guidance in this area. The government has asked HMRC to prioritise NMW enforcement against employers who use unpaid interns. If this approach does not work, the government says it will review the existing policy and legal framework and will consider what other action can be taken. As a result it may be that, in due course, the use of interns is subject to specific legislative control.



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