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# A Review of Research on Unpaid Internship Legal Issues: Implications for Career Services Professionals

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## Abstract

Many college students are willing to gain professional experience through unpaid internships as a way to increase their employability after graduation. However, unpaid internships present a number of legal concerns. Very little research has been done to examine the complexity of these legal issues. This literature review analyzes related research and government policy associated with unpaid internship experiences, including compensation, lack of employment protections, possible consequences for international students, and university liability. Recommendations are provided to assist university/college career services professionals and internship supervisors in preventing and managing legal issues related to unpaid internship experiences.

**Keywords:** Compensation, employment protections, international students, legal issues, liability, unpaid internships

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Internships are valuable experiences for college students to apply their academic studies to real workplace situations, while gaining professional occupational experiences. Employers find these experiences to be just as valuable. Michigan State University's annual Recruiting Trends report indicated that 45% of employers' new hires completed their internship with the company, while another 39% of new hires had internship experience elsewhere (Collegiate Employment Research Institute [CERI], 2004). Some employers have even indicated they would not hire a recent graduate who did not complete an internship (CERI, 2008). Since employers are setting such high expectations, it is no surprise that college students are desperate to work in an internship before graduation. In fact, some students seeking this experience are often willing to work for free and still pay hundreds of dollars for academic credit (Gregory, 1998). It is estimated that about half of students completing internships are doing so for no pay (1998). A recent National Association of Colleges and Employers (2010) survey indicated that 95% of colleges are "relatively open in allowing their students to take unpaid internships" and post such positions on their job board; most often these positions are with nonprofits or government agencies (p. 2).

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At the surface unpaid internships just appear to be a simple solution for students to gain professional experience and build their resumes. However, unpaid internships present a number of legal concerns; in particular, the exploitation of student workers. One of the most well-known unpaid interns was Monica Lewinsky, who represented the “classic, exploited unpaid white-collar intern within the class complex political bureaucracy” (Gregory, 1998, p. 228). Although Lewinsky’s situation is not typical of all unpaid interns, her situation is an example of how employers looking for cheap or free labor may abuse unpaid interns. Gregory (1998) even went as far as comparing unpaid interns to child labor: “Unlike the more blatant forms of labor exploitation, student intern labor is more subtle, but perhaps equally persuasive, manifestation of the contemporary exploitation of labor in a capitalist political economy today” (p. 229). The exploitation of unpaid interns is likely hidden due to several reasons. First, there is a misconception that unpaid interns are safeguarded under employment protection laws because they work for an employer (Rubinstein, 2006). Unfortunately, unpaid interns are caught somewhere between discrimination protections as a student and as a professional employee. Additionally, students are so desperate for work experience and for building a professional network, they may be apprehensive to raise concerns about a behavior, such as sexual harassment, for fear their own professional success may be hindered (Grant Bowman & Lipp, 2000).

While legislation and case law related to unpaid interns have been minimal, the U.S. Department of Labor (2010) recently issued a fact sheet with guidelines to help determine if interns providing services to *for-profit* employers must be paid under the Fair Labor Standards Act (FLSA). The release of the federal fact sheet has drawn a tremendous amount of attention from national media, including the *New York Times*, Fox News, *U.S. News & World Report*, *Wall Street Journal*, CBS, and NPR, among other outlets. As expected, the report and the flurry of media attention have also caused university career services professionals to take a closer look at the implications of the unpaid intern. This literature review examines the legal issues related to unpaid internships, including compensation, lack of employment protections, possible consequences for international students, and university liability. Additionally, the author proposes recommendations to assist college and university career services professionals and internship supervisors in preventing legal issues with unpaid internships.

### **Compensation Issues**

The first legal issue is whether student interns are to receive pay. The employment protection concerns addressed later in the article are dependent upon whether an internship is paid or unpaid. The U.S. Department of Labor Wage and Hour Division

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recently issued a fact sheet outlining a 6-part test to determine whether an intern qualifies as an *employee* of a for-profit employer under the Fair Labor Standards Act (FLSA) and should receive compensation (2010). Interns at a for-profit employer are usually considered employees, unless all of the six criteria are met:

1. The internship, even though it includes actual operation of the facilities, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship. (U.S. Department of Labor [USDOL], 2010, par. 4)

The six criteria are based on the Supreme Court ruling in *Walling v. Portland Terminal Co.*, and have been used by many courts to “determine if an employment relationship exists for employees in training programs” (Coker, 2009, p. 36).

Certain industries are infamous for taking advantage of unpaid interns, including the arts, entertainment, banking, and finance (Collegiate Employment Research Institution, 2010; Curiale, 2010; Gregory, 1998). One television station intern said, “This is a one-year internship, and you learn everything in less than one month. Then for the other eleven months, you are doing a job you should be paid for” (as cited in Gregory, 1998, p. 242). Similarly, at MTV unpaid interns are involved in office work, as well as video editing assignments. According to a former MTV intern, students also have more attractive responsibilities, such as recruiting audience members for live performances and sitting in on important meetings (as cited in Oldman & Hamadeh, 2000). However, MTV has required its unpaid interns to complete academic credit for the experience (Oldman & Hamedeh). This requisite addresses one aspect of the FLSA six-point test: “The internship experience is for the benefit of the intern” (USDOL, 2010, para. 4). However, Wage and Hour Fact Sheet (USDOL, 2010) on internship compensation indicates that for-profit, private-sector employers need to meet all six criteria to justify not paying interns. In both examples, it appears the interns should be compensated because they are contributing to the everyday operations of the business, therefore clearly not meeting criteria number four.

Following complaints, some internship FLSA violations have been investigated. A Pittsburgh Wage and Hour Division study found that 80% of employers were violating the FLSA through student internships (as cited in Gregory, 1998). Additionally, in 1995 the U.S. Department of Labor investigated A. Brown-Olmstead Associates, a high profile public relations firm in Atlanta, for exploiting 54 student interns. The firm reached a settlement, admitting “it billed clients for unpaid intern work, agreeing to pay . . . \$31,520 in back pay to former interns . . . Two . . . interns were still in school when they were working for the firm, while the other 52 had college degrees, with some having previous professional experience in public relations” (as cited in Gregory, 1998, p. 245). These examples demonstrate that employers have been held accountable for violating FLSA regulations in regard to student internships.

In an attempt to avoid questions whether interns should be paid or not, even when students are willing to work for free, some employers have created intern contracts. These documents, when signed, indicate interns agree to receive stipends or credit instead of minimum wage (Gregory, 1998). Rather than paying student interns, some media organizations make a small tax-deductible contribution to the institution, which is then given to students as a stipend when they start their internship (Grant Bowman & Lipp, 2000). This last tactic is especially problematic. The process encourages the hiring organization to not pay interns by letting them make donations to the university. Not only is the employer receiving free labor, but they are receiving a tax deduction for their *donation* to the university.

### **Inadequacies of Employment Protection Laws**

The inadequacies of employment protection laws for unpaid interns are apparent through the excerpt written below by law student MaryBeth Lipp. She reflects on her vulnerability when she was sexually harassed during an unpaid internship at a Florida television station while she was a journalism student at Northwestern University:

*Preoccupation with sex and sexuality permeated the newsroom. I was just another intern from Northwestern, a nameless face that would disappear in a matter of months. While few people remarked on my work or knew any details about my future aspirations, many commented on my “flat chest” and made constant references to Monica Lewinsky, even calling me by her name. . . . The comments pale in comparison to the numerous times employees stared at my body, brushed against my breast, and “accidentally” bumped into my body. The news director and his assistant massaged my shoulders when giving me instructions, always standing so close I could smell their breath, cologne, deodorant. As time went on, I lost confidence in my work and even began to dread going to the station, but the intensity of the situation silenced my complaints. (Grant Bowman & Lipp, 2000, p. 98)*

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*[S]tudent interns who are unpaid have little employment protections, if any at all. Unpaid interns fall between the discrimination protections for students and those for employees.*

One might assume that if a student, such as Lipp, is providing services as an unpaid intern for an organization that he or she would be covered by employment protection laws. However, student interns who are unpaid have little employment protections, if any at all. *Unpaid interns* fall between the discrimination protections for students and those for employees. The legislation of the Fair Labor Standards Act (1938) defines an employee as “any individual employed by an employer,” (section 3[e]) while other federal laws provide similar definitions, including the National Labor Management Relations Act, the Family and Medical Leave Act, Civil Rights Act, and others (Rubinstein, 2006). The definition of an employee-employer relationship is somewhat elusive. Regardless, discrimination claims made by unpaid interns have been denied by courts

due to the simple fact that unpaid interns are not deemed employees. Even so, Rubinstein (2006) says, “numerous courts, including the Supreme Court, have recognized that these definitions are circular and useless” (p. 159). In most cases, courts have defined employees by those who receive compensation (Yamada, 2002). These factors leave unpaid interns with little to no employment protections.

In the workplace Title VII of the Civil Rights Act of 1964 protects employees from discrimination based on race, color, religion, sex, and national origin. Rulings in court cases *O'Connor v. Davis* and *Smith v. Berks Community Television* suggest the Title VII protections do not apply to unpaid interns. In *O'Connor* (1998), the student completed a required internship at the Rockland Psychiatric Center and was paid through the college’s work-study program. During her experience she was repeatedly sexually harassed by a doctor. The student attempted to claim a Title VII violation. However, the courts rejected her claim because she was not considered to be an actual *employee*. Similarly, in *Smith*, a television station volunteer’s (also considered an unpaid intern) Title VII claim was rejected by the court because volunteers “receive no financial remuneration . . . and contribute assistance on a purely voluntary basis,” implying they were not classified as employees as defined in the Civil Rights Act (as cited in LaRocca, 2006, p.135). Meanwhile, Title IX of the Civil Rights Act (1964) protects students from harassment in an education setting. However, Title IX does not extend discrimination protection to the internship site because these experiences typically take place off campus; therefore, universities have little control over these activities (Grant Bowman & Lipp, 2000). If the university has prior knowledge about an unhealthy work environment before an internship starts, institutional liability may exist. This will be addressed later in the article.

The Age Discrimination in Employment Act (ADEA) of 1967 provides employment discrimination based on age or anyone 40 or older. In *Shoenbaum v. The Orange County Center for Performing Arts*, a volunteer claimed he was denied a position due to his age; however, the court stated that ADEA did not offer protections for volunteers (as cited

in LaRocca, 2006). While *Shoenbaum* did not involve an unpaid intern, volunteers operate in similar capacities as interns, providing a service to an organization. At the time Yamada (2002) published his legal article on employment rights of unpaid interns, there were two age discrimination complaints made by two intern candidates against *The Atlantic Monthly* magazine under review by the Massachusetts Commission Against Discrimination. One of the applicants, Joanna Jackson, 41, received a letter blatantly rejecting her due to her age: "I am afraid that there has been a misunderstanding . . . When we say the internship is open to college students and recent graduates we take for granted that we will attract people in their twenties" (Prinz as cited in Yamada, 2002, p. 221). Because the internships are unpaid, it is likely that these claims will be denied because federal or state employment protection laws have been interpreted to apply specifically to *employees*. Additionally, the Americans with Disabilities (ADA) Act of 1990 provides employment protections for those with disabilities. Similar to the other employment protection laws, unpaid interns must meet the definition of *employee* to have their claims considered (Yamada, 2002). Consequently, it is likely that students completing unpaid internships would not be protected from age or disability discrimination while in the workplace.

### University Liability Issues

Universities may be liable for injuries or other harm incurred during off-campus activities, such as internships taken for academic credit. In most of these experiences, institutions may not have any *control* over what happens to the student at the off-site location (Kaplin & Lee, 2009). In *Gross v. Family Services Agency and Nova Southeastern University*, a doctoral program student completing her required practicum at an off-site location was assaulted in the Agency's parking lot (as cited in Kaplin & Lee, 2009). The university had prior knowledge that other assaults happened in the parking lot. However, the student was not aware of the assaults and filed a negligence suit, which was settled by the Agency. This case suggests universities may have a duty to protect students who participate in required internships under foreseeable situations. University staff might be able to prevent this liability by (a) informing students completing unpaid interns about the risks they may encounter by not being paid, (b) monitoring work progress and responding to student intern concerns, (c) informing students when they have prior knowledge of an unsafe situation, and/or (d) discontinuing partnerships with employers who have repeated complaints about the poor treatment or exploitation of interns.

### Possible Consequences for International Students

There may be legal implications for international students who participate in unpaid internship programs, even though no legal precedence exists. It is a common assumption among many employers, students, and career services professionals that unpaid internships present no additional risk for international students. International students may risk violating their visa status and be deported if their internship employer is

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investigated for violating the FLSA (Rhoads & Konrad, 2010). International students may not be implicating their immigration status if the unpaid internship meets the Department of Labor rules for volunteer work (Rhoads & Konrad, 2010). The U.S. Department of Labor (n.d.) defines volunteer work as:

*Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable or similar non-profit organizations that receive their service. (para. 1)*

If the experience does not fit into the U.S. Department of Labor rules for volunteer work, then it is likely considered employment. International students could take the internship if they have the appropriate work authorization, such as Optional Practical Training or Curricular Training, dependent on visa status (U.S. Citizenship and Immigration Services, 2010).

### **Recommendations for Career Professionals**

When it comes to unpaid internships, career services professionals need to keep the well-being of students in mind at all times. Because few employment protection laws actually cover unpaid interns, students are especially vulnerable to exploitation and discrimination in the workplace. For this reason, it is especially important that career professionals be advocates for unpaid interns when unforeseen situations arise.

Career services offices should consider incorporating both preventative measures and a planned response process into department procedures relating to internships. First, preventative measures should include educating students about their employment rights or risks (with unpaid experiences) before starting an internship, as well as what to do and whom to contact if issues arise (Gregory, 1998). This education could be presented through information on the career center web site, one-on-one appointments with students when they are going through the internship application process, and/or as a part of internship program preparation seminar offered before students start applying for internships. Career advisors should also work closely with their institution's international student services office to ensure international students are authorized to work and not risking their visa status. Internally, preventative action can be woven into a university's internship program operations and policies. An institution may choose to implement a university-wide policy where academic internship credits require students to receive financial compensation for their work. Externally, career centers should encourage employers to pay interns, helping students avoid environments where they are not covered by employment protection laws.

According a National Association of Colleges and Employers (2010) survey, many university career services professionals feel that all internships should be paid. The survey's open comments section suggested that "unpaid internships were essentially

vehicles for corporations to exploit student labor” (p. 4). Career staff should also monitor for potential problematic work environments by reviewing internship position descriptions (submitted by employers) that will be posted on the career center’s job and internship board. For example, an unpaid internship with a vague description may merit a follow up call to the employer to learn more about the position responsibilities. Career staff may then decide to post the position with an updated description, or not post the internship at all because it is unpaid. Internship programs should also include an internship agreement, signed by the student, university, and employer. The agreement should outline the terms of the internship, including non-discrimination policies (Grant Bowman & Lipp, 2000; Miller, Anderson, & Ayres, 2002). Once students are working at their internship site, career advisors should be reviewing internship progress reports, monitoring for any signs of an unhealthy work environment, such as discrimination or harassment (Grant Bowman & Lipp, 2000). Career centers are encouraged to incorporate weekly or bi-weekly seminars (in person or virtual) during the internship experience. During these seminars students not only reflect on their learning, but also discuss challenges they might be experiencing, including issues related to employment protection laws (Grant Bowman & Lipp, 2000). Career Services professionals could offer suggestions on how to address these challenges. More complex student situations, or those that merit confidentiality, could be handled through a one-on-one appointment between the student and Career Services professional. Employers who continually exploit students should not be permitted to post, promote or recruit interns at the university (Gregory, 1998). By ending relationships with problematic employers, career centers are also reducing institutional liability.

General university internship program policies and education on unpaid internship issues should be communicated with all staff and faculty who work with student interns. This strategy should help reduce inconsistency in how the internship program is communicated with students and employers. It helps to avoid situations similar to the sexual harassment issues the Northwestern University student faced as referenced earlier in this article. University leadership claimed there was no written contract with internship sites. However, the university internship handbook specified that all internship hosts must sign an agreement, which included the university’s harassment policy and anti-discrimination laws (Grant Bowman and Lipp, 2000). When all university stakeholders are aware of institutional internship policies, a more consistent message is communicated with both students and employers. Consistency may simplify how smoothly university personnel can assist students if unexpected issues occur during their internship experiences.

When unforeseen situations occur with unpaid interns, it is important for career centers to have a response process in place. Grant Bowman and Lipp (2000) suggest the following approach:



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1. Although university career advisors cannot investigate off-site issues, such as discrimination or harassment claims, they should promptly contact someone at the internship host site to ask for an investigation;
  2. Career staff should stay in contact with the intern, providing support throughout the investigation;
  3. If the intern's experience does not improve and the accused harasser retaliates, career staff should speak with the internship site contact again;
  4. If the situation does not improve and continues to worsen, career staff should work with the intern site to try to move the intern to a different department or change the intern's work schedule to avoid the harasser;
  5. If the issue still continues, career staff should assist the student in finding a new internship site that will give him or her a similar educational experience. If this stage is reached, the university should consider ending its relationship with this internship provider.

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No matter the situation, it is important that the responding career services staff acts in a timely manner, keeps the appropriate university personnel informed (such as career services director, related faculty, or legal counsel) and serves as an advocate for the student.

### **Conclusion**

More and more employers are expecting college graduates to have gained professional work experience through internships. Desperate to increase their real world skills before they graduate, some students seem willing to work for free. Although internships — paid or unpaid — will help open doors to employment opportunities, unpaid experiences present a number of legal concerns that are often overlooked. Unpaid internship experiences are more likely to present situations where students are exploited for free labor. Because students need the work experience and opportunities to expand their networks, they are more likely to *put up with* harassment, discrimination or other demeaning behavior. This combination alone is enough to help understand why this pattern of exploiting unpaid interns continues, as well as why unpaid intern experiences have not been given adequate legal attention. It is in the best interest of any student to complete an internship for pay. The U.S. Department of Labor provides some guidance to determine when for-profit organizations should pay interns (2010). By receiving compensation for their work, interns are then deemed employees and are typically covered by most federal and state employment protection laws. If students receive no pay, they have no employment protections.

In most situations internships are often a college student's first experience in a professional work environment. They may be just beginning to learn about workplace etiquette and are likely not aware of employee protection laws, let alone may know when an employer's behavior is inappropriate, unethical, or violates the law. For these reasons, it is of utmost importance that career services professionals be aware of the legal issues that surround unpaid internships. Career advisors need to help students understand the risks they may encounter during an unpaid internship and what they should do if unforeseen issues arise on the job. If students completing unpaid internships become the victims of harassment or discrimination, it is equally important that career advisors take appropriate action and serve as an advocate for the student while the complaint is being handled.

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### References

- Americans with Disabilities Act § 12101 et seq., 42 U.S.C. (1990).
- Age Discrimination in Employment Act § 621 et seq., 29 U.S.C. (1967).
- Collegiate Employment Research Institute. (2004). *2004-2005 recruiting trends*. East Lansing, MI: Michigan State University.
- Collegiate Employment Research Institute. (2008). *Ready for prime time? How internships and co-ops impact full-time job offers*. East Lansing, MI: Michigan State University.
- Collegiate Employment Research Institute. (2010). *Unpaid internships: Knowing before acting* [PowerPoint slides]. East Lansing, MI: Michigan State University.
- Coker, L. (2009). Legal implications of unpaid internships. *Employee Relations Law Journal*, 35(3), 35-39.
- Curiale, J. L. (2010). America's new class ceiling: Unpaid internships, the Fair Labor Standards Act, and the urgent need for change. *Hastings Law Journal*, 1531-1560. Retrieved from LexisNexis Academic.
- Fair Labor Standards Act §§ 201-219, 29 U.S.C. (1938).
- Grant Bowman, C., & Lipp, M. (2000). Legal limbo of the student intern: The responsibility of colleges and universities to protect student interns against sexual harassment. *Harvard Women's Law Journal*, 95-131. Retrieved from LexisNexis Academic.
- Gregory, D. L. (1998). The problematic employment dynamics of student internships. *Notre Dame Journal of Law, Ethics & Public Policy*, 227-264. Retrieved from LexisNexis Academic.
- Kaplin, W. A., & Lee, B. A. (2009). *A legal guide for student affairs professionals*. San Francisco, CA: Jossey-Bass.
- LaRocca, J. J. (2006). Lowery v. Klemm: A failed attempt at providing unpaid interns and volunteers with adequate employment protections. *The Boston University Public Interest Law Journal*, 131-142. Retrieved from LexisNexis Academic.
- Miller, L. K., Anderson, P. M., & Ayres, T. D. (2002). The internship agreement: Recommendations and realities. *Society for the Study of the Legal Aspects of Sport and Physical Activity*, 37-60. Retrieved from LexisNexis Academic.
- National Association of Colleges and Employers. (2010). *Unpaid interns: A survey of NACE membership*. Bethlehem, PA: National Association of Colleges and Employers.

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- O'Connor v. Davis, 126 F. 3d 112 (2d Cir. 1997).
- Oldman, M., & Hamadeh, S. (2000). *The best 106 internships* (8th ed.). New York: Princeton Review.
- Rhoads, M. B., & Konrad, H. L. (2010). Legal Q & A: What are the legal issues surrounding international students and unpaid internships? *NACE Journal*, 10-11.
- Rubinstein, M. H. (2006). Our nation's forgotten workers: The unprotected volunteers. *University of Pennsylvania Journal of Labor & Employment Law*, 147-184. Retrieved from LexisNexis Academic.
- Title VII of the Civil Rights Act § 2000e et seq., 42 U.S.C. (1964).
- Title IX of the Civil Rights Act § 2000h-2, 42 U.S.C. (1964).
- U. S. Citizenship and Immigration Services. (2010). *Student and exchange visitors: Students and employment*. Retrieved from <http://www.uscis.gov/portal/site/uscis>
- U. S. Department of Labor. (2010). *Internships under the Fair Labor Standards Act* (WHD Publication, Fact Sheet #71). Washington, DC: U.S. Department of Labor.
- U. S. Department of Labor (n.d.). *eLaws fair labor standards act advisor: Volunteers*. Retrieved from <http://www.dol.gov/elaws/esa/flsa/docs/volunteers.asp>
- Yamada, D. C. (2002). The employment law rights of student interns. *Connecticut Law Review*, 215-257. Retrieved from LexisNexis Academic.