www.morganbrown.com

CLIENT ALERT: Summer Hiring – Employers Must Tread Carefully When Engaging Summer Interns and Other Student Hiring

Hiring unpaid interns and other student workers is a risky proposition for private sector employers with potential legal pitfalls that can prove costly. With summer approaching, those considering hiring students must familiarize themselves with several important regulations, and use particular care in hiring seasonal staff. Many employers are unaware that the federal minimum wage law—the Fair Labor Standards Act of 1938 ("FLSA") – permits unpaid internships in the private sector only in very limited circumstances. In fact, regulations promulgated by the United States Department of Labor generally limit hiring unpaid interns in any situation other than through academic programs. Detailed federal and state rules apply to virtually all employers, including even the smallest start-up businesses. As a consequence, it remains extraordinarily difficult for most for-profit employer to lawfully engage unpaid interns.

When the student intern relationship is not available, employers had attempted to classify students as independent contractors. However, classifying student workers as non-employee independent contractors is usually not a practical alternative, particularly in Massachusetts and several other states where strict regulations limit this practice. Students engaged as "contractors" will not meet most state guidelines that limit the independent contractor designation, to workers who have independently established businesses and who are largely free from the direction and control of an employer.

Increasingly well-coordinated government enforcement and swelling private litigation create significant potential for significant legal exposure, which can include mandatory triple damages, for even unintentional infractions. Several recent media reports are likely to stimulate increased regulatory action, which may include widespread, unannounced child labor workplace "sweeps" that have been instituted in previous summers by regulators.

© 2026 Morgan, Brown & Joy, LLP

See Boston Globe (April 29, 2013).

Unpaid Internship Six Factor Test

Generally, an unpaid intern must be engaged in connection with a formal educational program. Under federal law, the following six criteria must be applied when making the determination as to whether an intern is covered by the federal minimum wage law:

1. The internship, even though it includes actual operation of the facilities of the employer, 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.

According to a United States Department of Labor Bulletin, if all six of the factors listed above are met, there is no employment relationship and the FLSA's minimum wage and overtime requirements do not apply to the intern. That is, the law permits the intern to work without pay, or at rate below the applicable minimum wage (currently $8 per hour in Massachusetts).

Some guidelines suggest that in addition to meeting the six factor test above, to qualify as an unpaid intern, an employer offering an unpaid internship should be able to answer "yes" to most or all of the following:

1. Is the work being offered an integral part of the student's course of study?
2. Will the student receive academic credit for the work or is the internship required for graduation?
3. Does the student have to prepare a report of his/her experience and submit it to an academic supervisor?
4. Has the employer received documentation from the educational institution indicating that the internship is approved and sponsored by the school?

© 2026 Morgan, Brown & Joy, LLP

5. Will the student perform work that other employees perform?
6. Does the student work for the purpose of learning (not merely performing a task for the employer)?
7. Is the student working and providing benefit to the employer less than half of the time?
8. Will the employer provide an opportunity for the individual to learn a skill, process, or other business function, or operate equipment?
9. Is there educational value to the work performed, that is, is it related to the courses the intern is taking in school?
10. Is the individual supervised by a designated staff member?
11. Is it clear that a job is not guaranteed upon completion of the training or completion of the person's schooling?

Three Factor Test for Massachusetts Independent Contractors

Classifying summer workers as independent contractors is usually not a viable solution in Massachusetts and many other states because state law limits the kinds of workers who can be so classified. The Massachusetts Independent Contractor Act, M.G.L. 149, §148B, provides that workers are presumed to be employees, rather than independent contractors, unless an employer is able to satisfy each element of a rigorous three-prong test:

1. The individual is free from control and direction in connection with the performance of the service, both under his/her contract for the performance of service and in act;
2. The services is performed outside the usual course of the business of the employer; and
3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed. See MBJ's summary of the law.

Most student workers will meet none of the three mandatory factors in this test, exposing a putative employer to substantial legal and financial exposure. This includes potential liability for unpaid overtime and other wages, as well as potential civil and criminal liability for workers' compensation premium avoidance, and failure to pay unemployment premiums. See Massachusetts Attorney General's Advisory 2008/1.

Massachusetts Youth Employment Rules for Minors Under 18

In Massachusetts, several regulations strictly limit (or prohibit) the hours

© 2026 Morgan, Brown & Joy, LLP

of work for minors who are hired and properly classified as regular employees in many occupations. For example, minors aged 16 and 17 may only work between 6:00 a.m. and 10:00 p.m. on school nights. (In certain establishments that serve customers until 10:00 p.m., they may work until 10:15 p.m. on school nights.) On non-school nights, 16 and 17 year olds may work until 11:30 p.m. and if they are employed in a restaurant or racetrack, they may work until midnight. Employees in this age group may not work more than 48 hours a week, 9 hours a day, or 6 days per week.

Hours limitations are understandably stricter for younger workers. Generally, minors aged 14 and 15 may only work between 7:00 a.m. and 7:00 p.m. and, during the school year, may work a maximum of 18 hours a week, 3 hours a day on school days and up to 8 hours a day on weekends and holidays. However, during the summer season (July 1 through Labor Day), employees in this group may work until 9:00 p.m. and may work up to 8 hours a day, 40 hours per week and not more than 6 days a week when school is not in session. Work permits are generally required for all minors under 18 and employers must keep the original permit on file at the place of employment as long as the minor is employed at that location or until the minor reaches the age of 18. For further information on child labor rules, please see MBJ's client update on the 2007 amendments to child labor laws in Massachusetts.

Employers are encouraged to contact their MBJ attorney with questions about summer hiring and youth employment laws.

Daniel Field is an attorney with Morgan, Brown & Joy, LLP and may be reached at (617)788-5016 or at dfield@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was published on May 10, 2013.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have. Customize the Author Byline?
byline-default

© 2026 Morgan, Brown & Joy, LLP