
MEMORANDUM FROM COUNSEL

TO: TAB MEMBERS
FROM: TAB GENERAL COUNSEL, DOUG PIERCE
SUBJECT: UNPAID INTERNSHIPS
DATE: 6/25/2010

The recent advisory from the Pillsbury Law Firm concerning unpaid internships correctly notes the six factors the Department of Labor (DOL) will use to determine whether an intern must be paid for his or her time at one of your stations. These six factors have existed for decades; however, it is appropriate to reconsider these factors every time a station contemplates bringing unpaid interns to the station. It is especially important to review these each summer when interns are likely to be present.

Noticeably absent from those six factors is any suggestion that simply because the intern is receiving some form of class credit on the internship that this somehow absolves the station from the requirement to pay wages to the intern. This is not an unintentional oversight. The mere fact that an intern does or does not receive class credit from his or her school, is not a factor to be considered in determining whether wages are owed. Many employers are under the mistaken belief that if the intern is receiving class credit they have no obligation to pay wages. Please do not fall victim to that erroneous line of thought.

Although it is always appropriate to consider whether any interns at your station satisfy the DOL's six factors, it is especially important under the current federal administration. The DOL has recently announced it is aggressively enforcing the Fair Labor Standards Act on what the DOL sees as the improper use of unpaid interns by companies for free labor. Nancy J. Leppink, the acting director of the DOL's Wage and Hour Division stated, "If you're a for-profit employer or you want to pursue an internship with a for-profit employer, there aren't going to be many circumstances where you can have an internship and not be paid and still be in compliance with the law." Although this statement might be an overstatement of the law, it is an accurate assessment of the DOL's current attitude about this issue.

Over the years I have occasionally spoken with those in broadcast station management who acknowledged that they have simply placed unpaid interns on overnight board shifts. It is highly unlikely that placing an unpaid intern in this sort of work is going to satisfy the DOL. Any employer who proceeds along these lines could very well find itself subject to substantial penalties from the DOL as well as liability for back wages, workers' compensation and unemployment benefits, and attorney's fees.

Please consult with qualified legal counsel if you have any concerns about this issue. This is one area where an ounce of prevention may be worth a ton of cure.