



legal alert

VOLUNTEERS FOR CHRISTMAS

As we approach the holiday season and many college students return for an extended break, some employers may see this as an opportunity to allow these students to serve as unpaid interns or volunteer workers. Before allowing such students to serve as unpaid volunteers, employers must be mindful of federal regulations governing interns and volunteers.

Typically volunteers performing services for state and local government agencies will not be regarded as “employees” under the Fair Labor Standards Act (FLSA). Regulations enacted under the FLSA defines a “volunteer” as “an individual who performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.” Such persons will be considered volunteers only if the services are offered freely and without pressure or coercion from the employer. Volunteers may be paid expenses, a reasonable benefit or a nominal fee without losing their volunteer status, but any such benefit or nominal fee must not be a substitute for compensation and must not be tied to productivity.

Serving as an unpaid intern is a bit more problematic in the private sector. The FLSA requires employers to pay persons who are “suffered or permitted” to work. The Department of Labor has made it clear that in the private sector interns will most often be deemed as employees and must be paid as such unless the intern is deemed a sort of trainee. To determine whether an intern is a trainee and therefore need not be paid, courts look to six criteria: 1) is the internship is similar to training that would be given in an educational setting; 2) is the internship experience for the benefit of the intern; 3) does the intern works under close supervision of staff and does the intern not displace regular employees; 4) does the employer receive no immediate advantage from the activities of the intern, and on occasion is its operation actually impeded; 5) is the intern entitled to a job at the conclusion of the internship; and 6) do the employer and intern understand that the intern is not entitled to wages during the internship.

Do not let the improper classification of your employees, interns and/or volunteers ruin this joyous season. If you have any questions with regard to any such matters, please do not hesitate to call Ethan O’Shea in HRMM&L’s Business Advisory Group.