

PRWeek

OCTOBER 28, 2011

WWW.PRWEEKUS.COM



MICHAEL LASKY

Interns: potential costs of this unpaid workforce

What do AT&T, IBM, the Cleveland Indians, and more than 800 other employers have in common? At present, they are all openly seeking unpaid interns on Craigslist and Monster. Unpaid interns allow companies to keep costs down while continuing to provide high-quality services and products to customers and clients – all in an economic climate where employers are looking to reduce expenses. Given that the nation's unemployment rate is hovering around 9%, there is a large pool of candidates willing to take unpaid internships to demonstrate their considerable skills and experience in the hopes of a paid position at the company or elsewhere.

So what is wrong with this picture? A great deal, according to the federal and state labor laws. Frequently, unpaid interns perform functions identical to those performed by other employees. In fact, the descriptions for these unpaid positions typically promote that the roles provide “real world” and “hands-on” experience in which the intern can perform essential business functions, interact with clients, and “really learn what it's like to work in the industry.” However, this real work disguised as a “learning opportunity” can have unintended consequences. As such, all employers – including PR firms – should reconsider unpaid internship positions.

A recent case involving Fox Searchlight Pictures serves as an important warning to marcomms companies. Last month, two interns who worked on the Oscar-nominated film *Black Swan* brought a class action complaint against the studio for millions of dollars in unpaid wages, overtime, liquidated damages, and attorneys' fees. The lawsuit alleges that Fox Searchlight improperly classified many employees as unpaid interns in an effort to reduce production costs and, in doing so, violated federal and state wage and hour laws.

These practices are not unique to Fox Searchlight, as demonstrated by even a cursory search of Craigslist or Monster. More lawsuits and enforcement actions in this area are expected, given the seriousness of this issue and the significant monetary penalties that can be levied against employers for failing to pay the minimum wage. The US Department of Labor has reiterated its

six-factor test for whether or not an internship (referred to as a “trainee” position under the law) may rightfully be unpaid. All six criteria must be met for an individual to be a properly classified a “trainee” (who need not be paid) and not an “employee” (who must be paid). These six criteria are:

- The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in a school or other educational environment;
- The internship experience is for the benefit of the intern (and, significantly, not the company or its clients);
- The intern does not displace the need for regular employees, but works under close supervision of existing staff;
- The company that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
- The intern is not necessarily entitled to a job at the conclusion of the internship;
- The company and intern understand that the latter is not entitled to wages for the time spent in the internship.

It is critical for any PR firm planning to engage unpaid interns to review these Department of Labor factors and ensure compliance with the law. This is especially true given the high cost of litigating or settling these wage and hour claims. Companies that violate this law are liable for unpaid wages, liquidated damages equal to twice the amount of the unpaid wages, and attorneys' fees. In fact, for many PR firms, paying at least the minimum hourly wage to interns demonstrates the respect the agency places on its entire workforce and promotes a positive culture, as well as the firm's ethical and legal practices. ■

Michael Lasky is a senior partner at the law firm of Davis & Gilbert LLP, where he heads the PR practice group and co-chairs the litigation department. He can be reached at mlasky@dglaw.com.