

## Interns: To pay or not to pay? That is the question ..

As the Summer vacation period draws to a close, a number of students will be knocking on the door of employers, looking for an internship: a chance to gain experience of working life before undertaking further study or committing to a full-time career. While internships can offer invaluable benefits to both employers and interns alike, an issue that is sometimes overlooked is whether or not the intern has a right to be paid. In this Update, we answer some of the key questions employers might have when contemplating whether to engage an intern.

### Common issues surrounding the use of interns

#### Q: WHAT IS AN 'INTERN'?

A: An 'intern' is someone who undertakes work experience in the form of an internship or placement in order to gain experience, make contacts and help them to secure a permanent job in their chosen career sector. This can range from school age children through to students who undertake training as part of a degree course. Other terms are used to describe similar arrangements, e.g. vacation placements and work experience schemes.

#### Q: DO INTERNS HAVE A RIGHT TO BE PAID?

A: Subject to certain exceptions, interns must be paid if they satisfy the legal test for being a 'worker'.

#### Q: HOW DO I KNOW WHETHER MY INTERN IS A 'WORKER'?

A. Workers are individuals engaged under a contract (which does not have to be in writing) to perform work personally. So, a key requirement is for the individual to perform the work himself and not to be able to delegate it to someone else. Excluded from the worker definition would be an individual who is in business on his own account.

Interns therefore can be workers particularly if they are doing substantive work, work for any reasonable length of time and cannot pick and choose their hours or their work (unlike a true volunteer, for example). People who merely 'work shadow' will not be workers. It is what happens in practice that matters.

#### Q: I THINK OUR INTERN WOULD BE CLASSIFIED AS A 'WORKER'. WHAT DO WE NEED TO PAY HIM?

A: At least the National Minimum Wage (NMW). For workers aged 22 or over, this is currently £5.80 an hour. For workers aged 18-21, £4.83 an hour. For young workers under 18 years old but above compulsory school age (who are not apprentices) the rate is £3.57 an hour.

From 1 October 2010, new regulations are coming into force which will slightly increase all NMW rates. The regulations will also amend the age brackets so that the standard adult rate applies to workers aged 21 and over as opposed to those aged 22 and over. The new regulations also introduce a NMW rate of £2.50 an hour for apprentices under 19 years of age or those aged 19 and over but in the first year of their apprenticeship.

Remember too that, if your intern is a worker, they will also be entitled to a pro-rata portion of the 28 day statutory holiday entitlement.

#### Q: I THINK OUR INTERN WOULD BE CLASSIFIED AS A 'WORKER' BUT THEY ARE HAPPY TO WORK FOR FREE. WHAT ARE THE POTENTIAL RISKS?

A: If the intern is caught by the NMW and the employer does not pay it to them, the employer may be committing a criminal offence and face the risk of fines. Many NMW cases are brought by H.M. Revenue & Customs. The individual can also make a claim for the pay he should have received.

If the intern is likely to be a worker, and does not fall within one of the exceptions to the NMW, the safest option is to pay them an amount sufficient to cover their NMW entitlement. Alternatively, adjust the arrangement to ensure that they are purely there to obtain the experience of work but are not to carry out any substantive work.

**Q: WHAT ARE THE EXCEPTIONS?**

**A:** There are three main exceptions to the obligation to pay NMW in the context of an internship. These are:

- (i) individuals undertaking certain Government-accredited apprenticeships;
- (ii) students taking a first degree or teacher training course who are working for up to 12 months as part of their course; and
- (iii) volunteer workers employed by a charity, voluntary organisation or statutory body, who receive no remuneration for the work they do, except for reasonable expenses or benefits in the form of accommodation or subsistence.

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