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The Unpaid Intern, Legal or Not

By **STEVEN GREENHOUSE**

With job openings scarce for young people, the number of unpaid internships has climbed in recent years, leading federal and state regulators to worry that more employers are illegally using such internships for free labor.

Convinced that many unpaid internships violate minimum wage laws, officials in Oregon, California and other states have begun investigations and fined employers. Last year, M. Patricia Smith, then New York's labor commissioner, ordered investigations into several firms' internships. Now, as the federal Labor Department's top law enforcement official, she and the wage and hour division are stepping up enforcement nationwide.

Many regulators say that violations are widespread, but that it is unusually hard to mount a major enforcement effort because interns are often afraid to file complaints. Many fear they will become known as troublemakers in their chosen field, endangering their chances with a potential future employer.

The Labor Department says it is cracking down on firms that fail to pay interns properly and expanding efforts to educate companies, colleges and students on the law regarding internships.

"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," said Nancy J. Leppink, the acting director of the department's wage and hour division.

Ms. Leppink said many employers failed to pay even though their internships did not comply with the [six federal legal criteria](#) that must be satisfied for internships to be unpaid. Among those criteria are that the internship should be similar to the training given in a vocational school or academic institution, that the intern does not displace regular paid workers and that the employer "derives no immediate advantage" from the intern's activities — in other words, it's largely a benevolent contribution to the intern.

No one keeps official count of how many paid and unpaid internships there are, but Lance Choy, director of the Career Development Center at [Stanford University](#), sees definitive evidence that the number of unpaid internships is mushrooming — fueled by employers' desire to hold down costs and students' eagerness to gain experience for their résumés. Employers posted 643 unpaid internships on Stanford's job board this academic year, more than triple the 174 posted two years ago.

In 2008, the National Association of Colleges and Employers found that 50 percent of graduating students had held internships, up from the 17 percent shown in a 1992 study by Northwestern University. This means hundreds of thousands of students hold internships each year; some experts estimate that one-fourth to one-half are unpaid.

In California, officials have issued guidance letters advising employers whether they are breaking the law, while Oregon regulators have unearthed numerous abuses.

“We’ve had cases where unpaid interns really were displacing workers and where they weren’t being supervised in an educational capacity,” said Bob Estabrook, spokesman for Oregon’s labor department. His department recently handled complaints involving two individuals at a solar panel company who received \$3,350 in back pay after claiming that they were wrongly treated as unpaid interns.

Many students said they had held internships that involved noneducational menial work. To be sure, many internships involve some unskilled work, but when the jobs are mostly drudgery, regulators say, it is clearly illegal not to pay interns.

One [Ivy League](#) student said she spent an unpaid three-month internship at a magazine packaging and shipping 20 or 40 apparel samples a day back to fashion houses that had provided them for photo shoots.

At Little Airplane, a Manhattan children’s film company, an [N.Y.U.](#) student who hoped to work in animation during her unpaid internship said she was instead assigned to the facilities department and ordered to wipe the door handles each day to minimize the spread of [swine flu](#).

Tone Thyne, a senior producer at Little Airplane, said its internships were usually highly educational and often led to good jobs.

Concerned about the effect on their future job prospects, some unpaid interns declined to give their names or to name their employers when they described their experiences in interviews.

While many colleges are accepting more moderate- and low-income students to increase economic mobility, many students and administrators complain that the growth in unpaid internships undercuts that effort by favoring well-to-do and well-connected students, speeding their climb up the career ladder.

Many less affluent students say they cannot afford to spend their summers at unpaid internships, and in any case, they often do not have an uncle or family golf buddy who can connect them to a prestigious internship.

Brittany Berckes, an Amherst senior who interned at a cable news station that she declined to identify, said her parents were not delighted that she worked a summer unpaid.

“Some of my friends can’t take these internships and spend a summer without making any money because they have to help pay for their own tuition or help their families with finances,” she said. “That makes them less competitive

candidates for jobs after graduation.”

Of course, many internships — paid or unpaid — serve as valuable steppingstones that help young people land future jobs. “Internships have become the gateway into the white-collar work force,” said Ross Perlin, a Stanford graduate and onetime unpaid intern who is writing a book on the subject. “Employers increasingly want experience for entry-level jobs, and many students see the only way to get that is through unpaid internships.”

Trudy Steinfeld, director of N.Y.U.’s Office of Career Services, said she increasingly had to ride herd on employers to make sure their unpaid internships were educational. She recently confronted a midsize law firm that promised one student an educational \$10-an-hour internship. The student complained that the firm was not paying him and was requiring him to make coffee and sweep out bathrooms.

Ms. Steinfeld said some industries, most notably film, were known for unpaid internships, but she said other industries were embracing the practice, seeing its advantages.

“A few famous banks have called and said, ‘We’d like to do this,’” Ms. Steinfeld said. “I said, ‘No way. You will not list on this campus.’”

Dana John, an N.Y.U. senior, spent an unpaid summer at a company that books musical talent, spending much of her days photocopying, filing and responding to routine e-mail messages for her boss.

“It would have been nice to be paid, but at this point, it’s so expected of me to do this for free,” she said. “If you want to be in the music industry that’s the way it works. If you want to get your foot in the door somehow, this is the easiest way to do it. You suck it up.”

The rules for unpaid interns are less strict for non-profit groups like charities because people are allowed to do volunteer work for non-profits.

California and some other states require that interns receive college credit as a condition of being unpaid. But federal regulators say that receiving college credit does not necessarily free companies from paying interns, especially when the internship involves little training and mainly benefits the employer.

Many employers say the Labor Department’s six criteria need updating because they are based on a [Supreme Court](#) decision from 1947, when many apprenticeships were for blue-collar production work.

Camille A. Olson, a lawyer based in Chicago who represents many employers, said: “One criterion that is hard to meet and needs updating is that the intern not perform any work to the immediate advantage of the employer. In my experience, many employers agreed to hire interns because there is very strong mutual advantage to both the worker and the employer. There should be a mutual benefit test.”

Kathryn Edwards, a researcher at the [Economic Policy Institute](#) and co-author of a [new study](#) on internships, told of a

female intern who brought a sexual harassment complaint that was dismissed because the intern was not an employee.

“A serious problem surrounding unpaid interns is they are often not considered employees and therefore are not protected by employment discrimination laws,” she said.

This article has been revised to reflect the following correction:

Correction: April 10, 2010

An article last Saturday about the increasing numbers of college students taking unpaid internships, using erroneous information from a report by the Economic Policy Institute, misstated the results of a 2008 survey by the National Association of Colleges and Employers and also the results of a Northwestern University study in 1992 . The NACE survey found that 50 percent of graduating students had participated in internships, not 83 percent. The university study found that of graduating students in 1992, 17 percent — not 9 percent — had held internships.

Unpaid interns at Fox Searchlight Pictures work on the film "Black Swan," hoping that the experience will provide them with a valuable education in the film industry. Instead, they find themselves performing menial work. An unpaid intern works 25 hours a week on the "Charlie Rose" show. Any legal analysis, legislative updates or other content and links should not be construed as legal or professional advice or a substitute for such advice. No attorney-client or confidential relationship is formed by the transmission of information between you and the National Law Review website or any of the law firms, attorneys or other professionals or organizations who include content on the National Law Review website. Many internships are paid, but unpaid internships are still offered – some estimate around a third are unpaid, but some estimate as much as half. There are already laws in place to prevent many types of unpaid work experience, but they include some grey areas and over the past couple of years there have been calls for the laws to be tightened. By law, employers do not have to pay their interns the national minimum wage if: the intern is required to do an internship (lasting less than a year) as part of a UK-based higher education course. Are unpaid internships ever OK? Here are some answers to commonly asked questions about intern pay. What laws determine when an intern should or should not be paid? The Fair Labor Standards Act, or FLSA, regulates minimum wage and overtime for U.S. workers, including interns. The Department of Labor's Wage and Hour Division is responsible for enforcing the law, and has a six-factor test to determine whether interns at private sector employers must be paid minimum wage. Not really. Many companies attempt to use academic credit as legal justification for an unpaid internships. But this week's "Black Swan" ruling suggests college credit is not a reason to not pay your interns, a move that, as Yamada put it, opens an "interesting door." From the judge's decision