



#Altraining

INTERNSHIP PROGRAMS: LIMITING POTENTIAL LIABILITIES


Rhonda Vickers Beassie | Texas State University System |
rbeassie@shsu.edu



LEARNING OUTCOME

After participating...

...you will be able to improve your internship programs to reduce the risks of harm and litigation to your students and institution.



AGENDA



- Designing the internship
- Setting up the internship
 - Rights & protections of interns
 - Rights & protections of the institution
- Traveling liabilities - limiting
- Implications of the Affordable Care Act
- FLSA implications
- Deferred Action
 - Undocumented students
- Where school risk meets intern rights



HOUSEKEEPING

- Topics discussed are not intended to serve as legal advice. Please consult with your Office of General Counsel for advice specific to your campus and state
- Intern/Internship intended to be synonymous with Co-Op, Extern, or Clinical Rotation



#Altraining

DESIGNING THE INTERNSHIP



■ ESTABLISH PURPOSE & PRIORITIES

- Establish or redefine the purpose of your program
 - Educational goals
 - Employment-related goals
 - Service goals
- Incorporate requirements of any accrediting or licensing authority
- Have a **program description with program goals** approved at the highest level



PROGRAM DESCRIPTION



YOUR PROGRAM DESCRIPTION

- Is the primary program shield and defense,
OR
- Weapon against institution if sued?



INTERN/EMPLOYER RELATIONSHIP




Method of placement/selection

- Student initiated
- School initiated
- Matching
- Job Bank



JOB BANK / SCHOOL POSTING


- Is a posting an endorsement?
- Disclaimer: *Although most employers and organizations offering internships are reputable and reliable, [the institution] does not guarantee the reputation or professional standing of those posting notices. Potential applicants are encouraged and advised to conduct due diligence and research potential employers and internships opportunities presented here and elsewhere.*

 **ACADEMIC IMPRESSIONS** 9

INTERN/EMPLOYER RELATIONSHIP

Establish Parameters of Student Relationship with Employer/Placement

- Intern Status
 - Employee or volunteer
- School Involvement
- Orientation and/or Training
- Description of Work/Expectations
- Student Records

 **ACADEMIC IMPRESSIONS** 10

CONFIDENTIAL INFORMATION

Which entity requires?
Which entity maintains?
How transmitted and maintained?

Types of Information:

- criminal history
- medical records
- credit records
- educational records



INTERN RELATIONSHIP WITH SCHOOL

Establish Expectations Early

- Internship Prerequisites (school's or employer's)
- Orientation requirements
- Academic credit options and requirements
- Oversight and access to site/supervisor
- Evaluation - nature and frequency
- Employer requirements for academic supervisor

#Altraining

SETTING UP THE INTERNSHIP



CHAT

Smarter Than You University (STU U) requires students to participate in career-related education prior to graduation. Amira is an accounting major seeking an internship, but she has no - I mean zero - work experience.

After the internship coordinator asks about her lackluster resume, Amira explains that she wasn't born in America, but her family relocated here when she was 14. She graduated from high school in Texas, but doesn't have citizenship, a green card, or any other authorization for being in this country that would allow an employer to hire her.

How can Amira fulfill her graduation requirement?



RIGHTS & PROTECTIONS OF INTERNS

Can Undocumented Students Intern?

If qualify

- here by 2007, prior birthday
- no lawful status
- no felon

Eligible for authorization security card

Supreme Court Decision in U.S. v. Texas does not impact those that were already in eligible for DACA

DACA
Deferred Action for Childhood Arrivals

ai ACADEMIC IMPRESSIONS 15

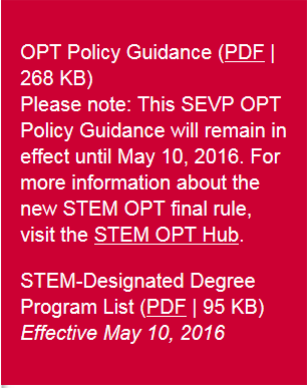
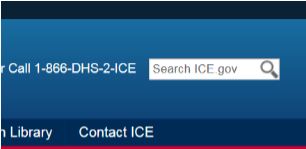
DACA: WHAT PLACEMENTS SHOULD KNOW


- Does NOT require a sponsor and no cost
- Require I-9
- Accept an intern with EAD as identity
- Keep track of expiration date and re-verify eligibility
- DACA individuals in paid internships are subject to all employment protections

ai ACADEMIC IMPRESSIONS 16

RIGHTS & PROTECTIONS OF INTERNS

INTERNATIONAL STUDENTS

- <https://www.ice.dhs.gov/sevis/practical-training>
- 
- 



17

RIGHTS & PROTECTIONS OF INTERNS

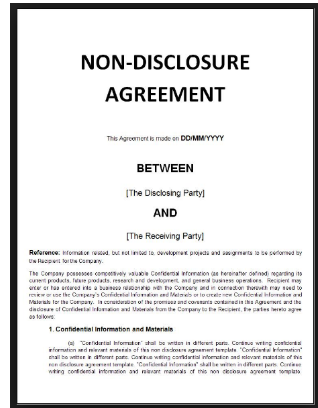


- Largely dependent on employment status
- Institutional program/contract protections
- Insurance
- Safety Training



18

RIGHTS & PROTECTIONS OF INTERNS



- Educate student about employer paperwork
 - Confidentiality Agreements
 - Non-Disclosure Agreement
 - Non-Compete Agreement
 - Waiver of rights
 - Indemnity, Hold Harmless

RIGHTS & PROTECTIONS OF THE INSTITUTION



RIGHTS & PROTECTIONS OF THE INSTITUTION

A Contract by Any Other Name

- Internship Agreement
- Interagency Agreement
- Clinical Rotation Contract
- MOU between X & Y
- Affiliation Agreement
- Letter of agreement
- Student Handbook
- Requirements on website
- **Sample!**



RIGHTS & PROTECTIONS OF THE INSTITUTION



Risk Shifting or Balancing

- Confidential information?
- Student malpractice insurance?
- Institutional insurance?
- Non-discrimination agreements - including disability?
- Who has authority to sign and "bind"?

22

RIGHTS & PROTECTIONS OF THE INSTITUTION

Determine Any Required or Prohibited Clauses

- Governing Law
- Altering Statute of Limitations
- Dispute Resolution
- Completion of Internship in Termination
- Indemnity/Hold Harmless

Suggest Website Notice

The state Attorney General has published a list of clauses the [school] cannot agree to in any contract: Therefore, [school] lacks the authority to indemnify and hold harmless another entity, and no faculty, staff or student should sign such an agreement.

Adapted from UNC Wilmington Film Studies Internship Website



STUDENT/SCHOOL CONSIDERATIONS



- FERPA Release
- Student Learning Agreement
- Facilitate Insurance
- Application Requirements
- Training
- Releases
- Appropriate Level of Oversight



#Altraining

TRAVELING LIABILITIES - LIMITING



TRAVELING INTERNSHIP PRACTICES



Safety

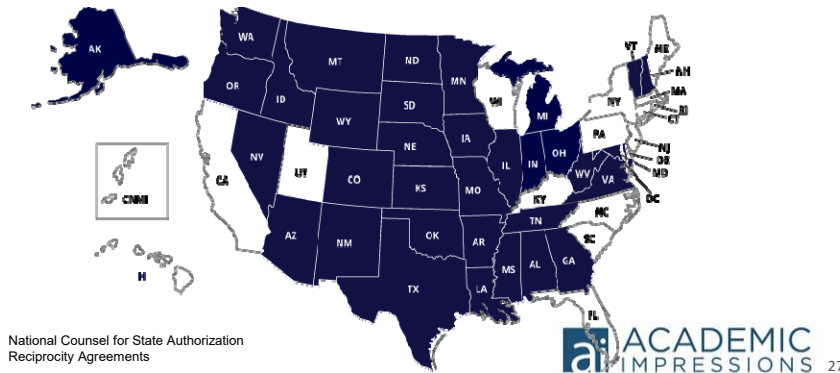
- Visit the site when possible
- Cover safety/spatial awareness
- Require a safety/travel plan
- Give written notice of personal responsibility
- Some schools require
 - Assumption of Risk
 - Release for injury
 - Travel Release



OUT OF STATE INTERNSHIPS

Is your institution “authorized” to provide an internship in another state?

- DOE On-Ground Rule
- SARA Member? Up to 10 at one field experience site (whether credit is provided or not)
- Otherwise check state education agency



INTERNSHIPS ABROAD



Single Site

- liaise with international programs
- provide basic visa info/resources
- jurisdictional employment law
- consider insurance requirements - health, travel
- documented correspondence/understanding with site
- require:
- contact information and itinerary
- student safety plan; include state department travel warnings awareness
- <https://travel.state.gov/content/passports/en/alertswarnings.html>

28

**INTERNSHIPS
ABROAD**



Entire Program Abroad

- pre-planning trips/knowledge
- on-site support & local connections
 - consulate
 - security
 - financial
 - legal (jurisdictional employment)
- emergency exit plan

DACA Students

- Must apply for **advance parole**
- by filing Form I-131 & paying the **\$360 fee**

29

#Altraining


RIGHTS AND PROTECTIONS OF INTERNS




ACADEMIC
IMPRESSIONS 30

ARE INTERNS PROTECTED: *Are they employees?*
If not:


Work Injuries Worker's comp only for employees	Privacy No constitutional obligation. Perhaps under state common law duty
Discrimination Usually not; a few states have passed legislation	Health Care Not eligible



SEXUAL HARASSMENT



- Relationship, again, to payment
- Cases
 - Wang v. Phoenix Satellite Television
 - Doe v. Lee
- NY, Texas, and Oregon Legislation



#Altraining

IMPLICATIONS OF THE AFFORDABLE CARE ACT




■ THE BASICS


- Employers with more than 50 employees
- Provide employees > 30 hrs a week the option of purchasing affordable health insurance
- Insurance coverage requirements have changed
- Subject employers must provide insurance to 95% or more of employees in 2016 or incur fines (potentially large fines)




■ HOW DOES IT WORK FOR INTERNS?




- Employers must include interns in calculation
- If intern works more than 30 hrs a week and employer has more than 50 employees
- Unless:
“student does not receive, and **is not entitled to**, payment in connection with those hours.”



■ ACA EXEMPTIONS



- Seasonal Workers
- Federal Work Study
- Volunteers
 - Government agency
 - Tax-exempt entity



#Altraining



FLSA IMPLICATIONS



POLL

The Smarter Than You University (STU U) Center for Political Progress has a semester long academic emersion internship program. Students usually intern with legislators, policy institutes, and non-profit agencies. But this semester, two students have an opportunity to work uptown with presidential campaigns: Mark with Hillary Clinton and Bruno with Donald Trump. Trump offers a salary plus benefits. Hillary offers only an unpaid internship, but recommends Mark seek funding from STU U.

Would your program/school permit Mark to intern unpaid with Hillary?

U.S. Department of Labor
Wage and Hour Division



U.S. Wage and Hour Division
(April 2010)

Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act

This fact sheet provides general information to help determine whether interns must be paid the minimum wage and overtime under the Fair Labor Standards Act for the services that they provide to “for-profit” private sector employers.

Background
The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer. Internships in the “for-profit” private sector will most often be viewed as employment, unless the test described below relating to trainees is met. Interns in the “for-profit” private sector who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.”

The Test For Unpaid Interns
There are some circumstances under which individuals who participate in “for-profit” private sector internships or training programs may do so without compensation. The Supreme Court has held that the term “suffer or permit to work” cannot be interpreted so as to make a person whose work serves only his or her own interest an employee of another who provides aid or instruction. This may apply to interns who receive training for their own educational benefit if the training meets certain criteria. The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.




39

DOL TEST SUMMARY

Fact Sheet #71; a/k/a Walling v. Portland Terminal (1947)

1. The internship is similar to training given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees;
4. The employer derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The intern not entitled to wages for the time spent in the internship.



40

AND FLSA LAWSUITS FOLLOWED



Glatt v. Fox Searchlight

- 2nd Cir (NY) - 2015 & 2016
- DOL test too rigid
- Primary Benefit Test
- Balance other factors
- Recognized validity of “properly designed” academic program
- Individualized inquiry

Schumann v. Collier

- 11th Cir (FL) 2015
- Also rejected full scale application of DOL test
- Followed Primary Benefit Test

The internship experience is for the benefit of the intern.



Some Took This Too Far...



Berger v. NCAA

Student Athletes made FLSA claims using the DOL fact sheet and said:

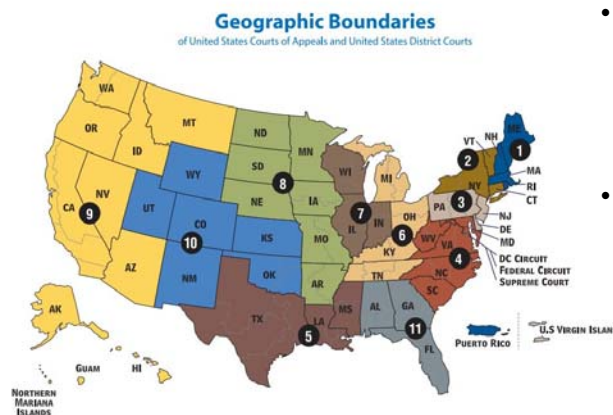
Pay me what you owe me



BERGER DECISION

- 6th Circuit trial Court
- Student-athletes were not employees of university under FLSA
- DOI Fact Sheet relevant to Interns - not Athletes
- Besides - DOL Fact Sheet has been “eschewed” by several courts - too rigid

FLSA - WHICH AUTHORITY



- Unpaid internships must benefit the student in all jurisdictions.
- If not in the 2nd or 11th Circuit . . .

#Altraining

WHERE SCHOOL RISKS MEET INTERN RIGHTS



POLL

As the internship supervisor to the nursing program, you arrange clinical rotations with local hospitals. Mary is mobility impaired as she is restricted to a wheel chair. So far the hospitals are keep telling you Mary cannot meet the essential functions of their nursing rotations.

What will you do?



■ INTERACTIVE PROCESS

- Seek assistance from school's 504 Coordinator
- Be wary of discrimination
 - Many needs to initiate the conversation
 - No disclosure without authority
- Make good faith efforts
- Inclusivity and accommodation is the goal

■ EMPLOYMENT LAW

If unpaid interns have no rights against an employer, where will they look next?

- The Institution?
 - Possible tort action against individual supervisor
 - Possible tort against school
 - Possible breach of express or implied contract against school
 - Possible constitutional actions against public institutions

SEX-BASED DISCRIMINATION



- What happens when two interns share a living space and one calls the school to complain that his roommate “got fresh?”
- If you get the call, what is your next step?

WAYS TO



- Preventative - run a good program
 - Purpose Statement
 - Education of students
 - Resources for proper oversight
 - Know your school’s policies
- Old fashioned ways
 - Insurance
 - Contracts
 - Shifting of responsibilities to placement and student
 - Waivers (not recommended)



TAKEAWAYS

- Have an approved Program Description Incorporating purpose
- Avoid discrimination claims through employer selection
- An unpaid internship can be an important educational opportunity - and pass the FLSA
- Unpaid interns have little to no employment law protections
- Undocumented students can intern
- Limit risks through policy, contracts, education and insurance



EVALUATION

Thank you!

Please remember to complete the event evaluation. Your comments will help us continually improve the quality of our programs.

© Copyright 2016 Academic Impressions

Follow us:



52