

# Nonprofit 411

## HELP WANTED: FIVE TIPS FOR MANAGING YOUR INTERNSHIP PROGRAM

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Coveted internships can be rewarding for both the organization and the intern, particularly in nonprofits focused on maximizing resources to fulfill their missions. However, in view of recent high-profile cases brought by unpaid interns against employers, even nonprofits need to ensure that their use of interns is legally compliant.



While the law on internships is complicated and fact-specific, here are five steps you can and should take to inoculate your organization against liability:

**1. Understand proper classification.** The most critical issue in hiring interns is ensuring that they are properly classified. Perform workforce audits to determine whether your interns qualify as legitimate volunteers or trainees.

The federal Department of Labor applies a six-part test, which has been adopted in some instances under Massachusetts law, to determine whether an unpaid internship is lawful. Know that unless your interns meet *all* of these six criteria, they may be properly classified as “employees”:

- The internship primarily benefits the intern;
- The internship is similar to training provided in an educational setting;
- The intern does not displace regular employees;
- The employer derives no immediate advantage from the intern;
- The intern is not necessarily entitled to a job at the end of the internship; *and*
- The employer and the intern understand that the intern will not be paid.

As a rule of thumb, your first and most important question should be whether the arrangement provides the intern with broadly applicable knowledge or skills, as opposed to assisting the nonprofit with tasks that would otherwise be completed by employees.

**2. Ensure appropriate wage and hour payment.** Anyone properly classified as an employee must be paid minimum wage and overtime.

If you provide your interns with a stipend, it must be “nominal,” cannot exceed 20% of what a worker would have been paid for performing the same job, and cannot be tied to the number of hours worked or productivity.

**3. Develop clear internship program materials.** You can minimize risk by ensuring that interns have clear expectations. Review your program materials describing the internship, or consider developing an orientation packet or similar documents to address the unique role played by interns. Consider requiring interns to sign agreements that specify the terms of the arrangement.

**4. Update workplace policies.** Review existing policies for employees and compare them to the interns’ duties to determine which policies should apply to interns.

For example, if an intern is performing fundraising services, should he or she be trained on the organization’s written information security plan to help prevent data security breaches? Will the intern be using a computer where sensitive or confidential information will be stored, and should he or she therefore be given the computer use or confidentiality policy?

**5. Get the right insurance coverage.** Talk to your insurance agent to determine the scope of liability coverage and consider whether you may need additional coverage, thinking of both injuries *to* interns and injuries caused *by* interns.

Laws governing interns are complex and fact-intensive, and in some instances Massachusetts law is more restrictive than laws in other states. When in doubt, consult with counsel to ensure that your programs are structured properly.

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