



FASHION LAW INSTITUTE

Dos and Don'ts: A Fashion Company's Guide to Managing a Lawful Internship Program

The fashion industry runs on intern power, or sometimes it seems that way. The U.S. Department of Labor, however, is concerned that unpaid internships are replacing entry-level jobs and is looking much more carefully at what interns are really being asked to do.

Yes, internships are often precious steppingstones for students, providing opportunities to enhance résumés and slip well-shod feet into otherwise tightly closed doors. No, the benefit of résumé lines is not always enough to replace cold cash, at least in the eyes of the Department of Labor, especially when an intern is doing the work of a full-time employee or performing menial tasks. Hazing one's interns à la "The Devil Wears Prada" might win you a Golden Globe in Hollywood, but in real life the only thing it will earn you is a hefty fine and orders to distribute back pay.

That said, so long as you play by the rules, hiring unpaid interns can be profitable and rewarding for both companies and students. Follow these simple suggestions and you will be well on your way to avoiding a Fair Labor faux pas:

DO help your interns learn skills they can use at other jobs, whether its patternmaking or memo writing.

DON'T assign interns filing, photocopying, errands, or other mundane tasks (i.e. picking up dry cleaning, fetching lunch and coffee, acting as a courier, etc.).

DO provide close supervision for interns, including the opportunity to shadow a senior employee; a day in the life of the creative director, public relations manager, or graphic designer is a the kind of learning experience that the Department of Labor wants to encourage.

DON'T have more interns than full-time employees working in a single department. If the workload allocated to an intern is that of a full-time employee (or two), then you're breaking the law.

DO make sure that interns understand that there is no guarantee of a job at the end of the internship.

DON'T rely on the fact that interns receive some benefit in the form of improved work habits while performing repetitive required tasks like clerical work (unless the intern is training to be a clerical worker). In other words, be sure to give more than you get.

Happy and successful interns create a good reputation for the company, and some interns may ultimately be retained as productive and valuable (paid) employees. To show interns that you appreciate their time and energy it's a great idea to provide stipends to cover expenses whenever possible. An intern shouldn't have to pay to work. What's more, working with institutions to provide academic credit to unpaid interns is one way to ensure interns benefit from the internship.

When in doubt, refer to the Department of Labor's six factors, listed below, to determine whether a worker is a trainee (intern) or an employee for the purposes of the Fair Labor Standards Act. In order to legally employ an unpaid intern and comply with labor laws, an internship program must be in full compliance with ALL six factors:

1. Training should mirror that of a vocational program;
2. Training must be for the benefit of interns;
3. Interns should learn from current employees, supplementing their work but never serving as their replacements;
4. The company must not immediately benefit from the work of interns; instead, the employer's operations may actually be impeded on occasion;
5. The interns are not automatically entitled to a job at the end of the program; and
6. Both the employer and the interns recognize that the interns are not entitled to any wage earnings during their time in the internship program.

In practice, the range of unpaid internships that meet these guidelines is fairly narrow, and walking the fine line between lawful and unlawful can be as difficult as walking the runway in a pair of twelve-inch platforms. Worse yet, a stumble here will cost you more than a bad picture and a bruised ego; the legal costs and public relations fallout from a failed internship program could be disastrous. Rather than fret about it, follow the official guidelines.

Remember, your interns are the creative directors, executives, and general counsels of tomorrow's fashion industry, so treat them that way. Go ahead and deliberately distress a leather bag or cut a dress down to size, but never do either to an intern.

