The History and Context of Unpaid Internships

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According to a survey conducted by the National Association of Colleges and Employers (NACE) of the class of 2012 undergraduate college graduates, 55% of the recent graduates surveyed had at least one internship or co-op experience while they were obtaining their degree. Of that 55%, 51% of the interns were offered a job, with the majority of those interns working at companies that paid their interns (National Association of Colleges and Employers, 2012). Since the recession in 2008, the number of unpaid internships for college students in the United States has increased; however, so has the controversy regarding unpaid internships (Bacon, 2011). There has been much debate about the legitimacy and ethics surrounding unpaid internships and whether the guidelines set forth by the Department of Labor in 2010 regarding unpaid internships has helped or hurt college students is still yet to be fully determined. In order to understand the issue holistically, it is important to look at the history surrounding this form of experiential learning, as well as look at viewpoints from employers, faculty members, and college students.

Historical Roles of Internships

Internships, whether paid or unpaid, are a great way for students to apply what they have learned in the classroom to a real-world setting. Internships provide college students with hands-on experience in order to help them gain the skills needed for future full-time jobs (Aoun, 2010). Although internships have been around for quite some time, the infrastructure and purpose has evolved over time. Some experts say the original form of internships came in the way of apprenticeships (Haire & Olofson, 2009) which started in the Middle Ages during the 11th and 12th centuries with the trade guilds in Europe (Spradlin, 2009). Apprenticeships could last several years and students could start in these positions as early as 16 years old. The apprentice would pay the master to work alongside him to learn a trade such as printmaking, for example. In return
for payment, the master would not only teach the apprentice a new trade, but he would also provide him with housing and food during the duration of the apprenticeship (Haire & Olofson, 2009).

The Industrial Revolution during the 18\textsuperscript{th} century created a major shift in the type of work that was sought. Young workers moved away from apprenticeships for skilled labor positions and started getting jobs in factories or seeking vocational schooling. Between 1920 to 1980, the fields of engineering, medicine, and business increased significantly and started incorporating practical training with the theory being taught in the classroom (Spradlin, 2009). Interns were medical professionals who had completed their degree but did not have their license to practice. Eventually the term intern started to spread to other professional industries like government, but it was not until about the late 1960’s that formal internships started to emerge. Industries such as entertainment, business, communications, and government started using internships as a way to recruit top students. In the late 1970’s and 1980’s, universities started awarding credit to students who interned as a way to make internships more appealing (Spradlin, 2009). Internships were not just limited to the summer time, but could be incorporated into the Fall and Spring semester, too.

When the recession hit in 2008, many employers began hiring unpaid interns, which caught the attention of The New York Times and author, Ross Perlin, who wrote a book regarding the controversial issue of unpaid internships entitled, Intern Nation (Grasgreen, 2011). Internships, whether paid or unpaid, created several successful professionals including Oprah Winfrey, who interned at a CBS affiliate station while in college, and Brian Williams, who was a White House intern (Haire & Olofson, 2009).

Legal Implications
UNPAID INTERNSHIPS

It is also important to see how the law has affected internships throughout history. There are three major events in history that are notable in regards to internship laws. The first was the passing of the Fair Labor Standards Act (also referred to as FLSA) in 1938, which established general rules regarding minimum wage. The second key event was in 1947 with the United Stated Supreme Court case, *Walling v. Portland Terminal*, which essentially set the criteria for employers regarding unpaid internships or training programs. The final event was the issuance of Fact Sheet #71 in 2010 by the Department of Labor, which set six guidelines that all for-profit companies must follow in order to legally hire an unpaid intern and not have to pay them minimum wage under the FLSA (Bacon, 2011). The six criteria that must be met under Fact Sheet #71 are:

- the internship is similar to training that would be received in an educational environment;
- the experience is for the intern’s benefit;
- the intern does not displace regular employees but works under close supervision of existing staff;
- the employer that provides the training derives no immediate advantage from the intern’s activities and, on occasion, may actually be impeded in its operations;
- the intern is not necessarily entitled to a job at the conclusion of the internship;
- and the employer and the intern understand that the intern is not entitled to wages for the time spent in the internship. (Schwartz, 2010, para. 1)

The FLSA emerged from the Great Depression and it was because of great efforts from President Roosevelt that child labor was banned and employees were forced to be paid a minimum hourly wage for their work. Still to date, as long as an employer is covered by the FLSA, it is required to pay a minimum wage to its employees, which differs by state. Under FLSA, there are distinct differences between an “employee,” an “intern,” and a “volunteer.” An employee is employed by an employer and is permitted to work. A person only qualifies as an intern if all six criteria under the recent Fact Sheet #71 are met; however, if any of the six criteria is not met, that person is considered an employee and must be paid at least minimum wage.
Interns at non-profit organizations and government agencies are considered volunteers under FLSA and, therefore, are not required to be paid minimum wage for their services (Bacon, 2011).

As previously mentioned, the Supreme Court case, *Portland Terminal*, set the framework for first defining unpaid internships. In the *Portland Terminal* case, the Court ruled that under FLSA, “trainees” were not employees and, therefore, did not need to be paid minimum wage. At the time, unpaid railroad trainees would shadow railroad employees for a week to learn the job before they were hired (Bacon, 2011). The Court ruled that trainees were not employees according to the following specifications:

The work was a practical training program; the trainees benefited from the experience; the work did “not displace any of the regular employees who did most of the work themselves” and were supervised at all times; the work did not “expedite the company business” and could “actually impede and retard it;” the trainees were not guaranteed an employee position for their work; and the employer never “undertook to pay, nor did the trainees ever expect to receive, any remuneration for the training period other than the contingent allowance.” (Bacon, 2011, p.72-73)

In addition, the Court ruled that the trainees were not employees because the employer received no immediate benefit from their work. Therefore, because the trainees were not considered employees, they were not able to receive minimum wage payments. Moving forward, any employers whose trainees fell within the standards set by the Supreme Court, did not have to pay them because they were trainees and not employees (Bacon, 2011).

In March 2010, the Department of Labor (DOL) issued Fact Sheet #71, which essentially laid out the same six criteria regarding unpaid internships as the *Portland Terminal* case. The law remained the same, but circumstances had changed. Up until March 2010, the *Portland Terminal* case criteria was never tested against interns, only trainees. By issuing Fact Sheet #71, the DOL clarified the six criteria and stated that these criteria applied to both interns and trainees at for-
profit employers. Once again, the interns must meet all six criteria to be exempt from the FLSA rights of an employee (Bacon, 2011).

Although laws are being made to protect unpaid interns, one major problem is that no one is holding employers accountable for whether their unpaid interns are meeting all six criteria. There have been three very high profile cases where former unpaid interns are suing their employers for violating FSLA laws and to date, one case was dismissed, one is yet to be finalized and the third case ended in a settlement. On May 8, 2013 a U.S. District Court Judge told a group of former unpaid interns for Hearst Corporation, a large publishing company, that they could not sue the publisher as a joint class and would have to sue individually if they wanted their case heard (Wong, 2013). Two former unpaid interns at Fox Searchlight Pictures, working on the set of the movie, “Black Swan,” also filed a lawsuit against their former employer claiming that they were given tedious work to do, like getting coffee, that was not educational and therefore was in violation of the labor rules (Greenhouse, 2011). In December 2012, Charlie Rose and his production company agreed to pay up to $250,000 to settle a lawsuit being filed against them by a former unpaid intern who also claimed that Charlie Rose violated minimum wage laws. The settlement agreement noted that Mr. Rose and his production company, “do not admit any liability or wrongdoing” (Greenhouse, 2012, para. 7). The Charlie Rose settlement is the first settlement regarding lawsuits filed by unpaid interns against their former employer (Greenhouse, 2012). There has been a lot of press about unpaid internships and Fact Sheet #71 over the past few years, but if the Courts or Department of Labor are not going to keep employers accountable to the laws in place, then who is going to protect the unpaid interns when labor laws are being violated? This is just one of several reasons why it is important to raise awareness about the controversies surround unpaid internships.
Significance of Internships

Internships are an invaluable experience for the employer and student when the hiring manager takes time before the internship begins to plan practical and authentic projects for the intern. Whether or not the internship is paid, students can learn great hands-on experience and transferable skills through an internship and employers can learn new perspectives from fresh minds by hiring an intern (Weinstein, 2010). Academic internships are a great way for a student, college, and employer to partner and build a meaningful relationship. These internships can increase connections between the college and the community (Westerberg & Wickersham, 2011).

Several economists are predicting that the number of unpaid internships will continue to increase, especially in the movie and entertainment businesses. Movie companies have defended themselves on using unpaid interns because they claim the internships are educational and beneficial for the students and because the internships are very competitive and an important way to make it into the industry full-time. Some students, however, are arguing that this gives an unfair advantage to college students who are affluent and can afford to take an unpaid internship (Greenhouse, 2011). Especially in certain industries like the entertainment business, students must have at least one internship in their desired field before graduating if they want to remain competitive when they go to apply for their full time job. For students who cannot afford to take an unpaid internship, this puts them at a direct disadvantage for getting a full time job in several industries (Greenhouse, 2011). Research indicates that unpaid internships negatively affect low income student populations and only one in five colleges or universities has some sort of program that helps to compensate students for unpaid internships (Grasgreen, 2011). Mark Oldman, co-author of The Internship Bible, and co-founder of Vault Inc., a career counseling company, said, “It used to be that internships used to be a useful enhancement to one’s resume. Now it’s
universally perceived as an essential stepping stone to career success” (Lee, 2004). As internships continue to rise as an important career milestone, and unpaid internships continue to increase among employers, there will become a greater divide between students who can and cannot afford these critical opportunities (Lee, 2004).

**Conclusion**

As the role and significance of internships has changed throughout history, several regulations have been established by the federal government to protect students while interning. Unfortunately, many of the laws that have been put in place around unpaid internships are confusing to employers and students, and the laws are not being enforced (Bacon, 2011). The key is not necessarily to eliminate all unpaid internships, but the federal government needs to provide better clarification on its rules and hold employers accountable. It is important to ensure that students are not being taken advantage of during any internship, whether paid or unpaid.
References


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