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Internships and the Massachusetts Minimum Wage Law

by Adam J. Shafran, Esq.



Adam Shafran

Internships, both paid and unpaid, are popular across nearly every industry throughout the country and in Massachusetts. Many companies, however, offer unpaid internships based on an often mistaken belief that an intern does not need to be paid minimum wages. In Massachusetts, this could not be farther from the truth, as the Massachusetts minimum wage law requires all individuals, regardless of whether or not they are classified as

interns, to be paid at least the state minimum wage unless one of five exceptions apply. They are as follows: (1) someone providing a professional service; (2) agricultural or farm workers; (3) people being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions; (4) members of religious orders; and (5) outside sales workers who don't make daily reports or visits to the office or place of their employer. If your intern does not fit into one of the exceptions, they must at least be paid the state minimum wage for their time working as an intern.

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Constructive Knowledge of Overtime Work Sufficient for Wage Act Liability

by Robert P. Rudolph, Esq.



Robert Rudolph

The Appeals Court of Massachusetts recently decided that an hourly employee who claimed that she was frequently pressured to work through her lunch break, which she took at her cubicle in the office, could sue her employer for unpaid overtime even though she did not record this extra time in the Company's electronic timekeeping system, Kronos, which was used to punch in and out. G.L. c. 151, Section 1A, the Commonwealth's overtime pay statute, provides that most employees must be paid one and one-half times their regularly hourly

rate for all hours worked in excess of forty (40) hours in a given week.

In the matter of *Donna Vitali v. Reit Management & Research, LLC*, Vitali sued her employer alleging she accrued overtime that was not credited by the Kronos system the company had in place to keep track of the employee's hours. Vitali worked nine to five, five days a week, with a one-hour paid lunch break each day. She also often stayed late after work on days she worked through her lunch. The company had a practice of paying overtime to hourly employees once they clocked forty-five hours for a given week, unless having reported work was done during the one-hour paid lunch. She alleged she was required to work during her

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Business Divorces – Stockholders' Rights in Closely Held Companies

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Frequently some of the problems that exist between shareholders could have easily been addressed in advance by the drafting of good Shareholder Agreements. Some of the provisions that often are in such agreements relate to sale of shares, termination of employment, confidentiality, non-competition, non-solicitation and non-hiring issues.

When the economy is bad, shareholder disputes in close companies are much more prevalent. Everyone is looking to cut expenses. Majority shareholders are more likely to terminate minority shareholders from

their employment. Shareholders are looking to cut unnecessary personal expenses, especially for majority shareholders, that are paid for by the company. Owners of shares in the typical small close corporation must be aware of the unique and extraordinary fiduciary duty that governs their dealings with fellow shareholders. More importantly, those who find themselves in the position of a minority shareholder should be aware that in most states, they do have legal rights against a majority shareholder's attempt to force them out.

Internships and the Massachusetts Minimum Wage Law

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What is a professional service?

While there is scant case law in the Commonwealth interpreting the meaning of "professional service" under Massachusetts minimum wage law, the Massachusetts Supreme Judicial Court has interpreted this phrase as part of an insurance contract to mean:

"A 'professional' act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual.... In determining whether a particular act is of a professional nature or a 'professional service' we must look not to the title or character of the party performing the act, but to the act itself [...] that membership in a profession has traditionally been recognized as requiring the possession of special learning acquired through considerable rigorous intellectual training."

Because there is limited guidance on this issue from state courts within the Commonwealth, the Massachusetts courts would also likely look to guidance in federal regulations defining overtime-exempt professional workers. These regulations state that a professional worker must mostly do work requiring advanced knowledge, predominantly intellectual in character, which includes consistent exercise of discretion and judgment. The advanced knowledge must be in a field of science or learning, or be of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The advanced knowledge must also be the kind usually acquired after a long course of specialized intellectual instruction.

Thus, a lawyer or doctor would clearly be providing professional services, but most interns, especially those in or right out of college, would likely not be.

What are training programs in charitable, educational or religious institutions?

Under Massachusetts law, only training programs through charitable, educational or religious institutions can be unpaid. Even if the internship is through a charitable, educational or religious institution, it must be a true training program.

There is a list of six characteristics of a training program under federal law, and these factors are used by the Massachusetts Department of Labor Standards to determine if someone working with a charitable, educational or religious institution can be legally unpaid. The factors are: (1) the internship is similar to the training which would be given in an educational environment; (2) the internship experience is for the benefit of the intern; (3) the intern does not displace regular employees, but works under the close supervision of the existing staff; (4) the employer that provides the training 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 employer and intern understand that the intern is not entitled to wages for the time spent in the internship.

The second and fourth factors above call into focus what an unpaid internship is supposed to be all about. An internship is supposed to be about the intern's benefit and not about free work for the employer. Even if an internship is with a charitable, educational or religious institution, it must be to help and train the intern. If it is not, it must be a paid internship.

If your company offers unpaid internships, you should consult with an attorney at Rudolph Friedmann to ensure that it is in compliance with all applicable Massachusetts wage laws.