

What is an internship and how to manage the relationship

Introduction

An internship is a means of allowing an individual to gain experience in a chosen field. It is not a legally defined relationship: the term can be used to refer to any type of work experience placement and can cover a wide range of arrangements, such as an informal work-shadowing placement, a placement as part of a graduate recruitment scheme or a lengthy arrangement covered by an employment contract.

An internship is often used as an opportunity for both the intern and the employer to gain exposure to one another before the employer decides whether or not to offer the intern permanent employment, but it does not necessarily have to be undertaken with a view to future employment.

Internships are commonly found in competitive sectors such as media, fashion, journalism and politics, where the supply of motivated candidates looking for specific work experience far outstrips demand at any given time.

There is no set duration for an internship: it could last anything from a week to a number of months.

Internships are frequently seasonal since with every summer period there is a new crop of graduates and school leavers seeking to enter the job market. Therefore, internships often take place during the summer holiday period.

Recruiting for an internship

It is not uncommon for internships to be offered to family or friends of existing employees at an organisation, or to be arranged as a result of an informal, speculative approach by an individual.

However, some organisations have formal recruitment schemes by which they identify talent pools for internships and possible future employment.

Whatever the length or formality of the internship, employers are advised to adopt a best practice approach to recruitment for their scheme by publicising it and inviting formal applications from candidates in the form of CVs with covering letters or application forms.

This allows the organisation to identify the best candidates by reference to objective factors. Furthermore, employers that do not take this approach will find it more difficult to prove that their decisions were not tainted by discrimination if challenged at an employment tribunal.

Unintentional discrimination could take place if candidates are drawn from a narrow pool of people who already have connections to the organisation, for example family and friends of employees. This could exclude people from backgrounds that have not historically been represented in the organisation.

The steps that an employer should take to attract applications for an internship will depend on factors such as the length of the placement, whether or not it is intended as a means of identifying candidates for permanent employment and the skills that the intern would be expected to have.

For a placement where the intern would be expected to make a full contribution to the organisation and where specialist skills would be required, the employer will want to ensure that it attracts and selects the best candidates, so may decide to run a formal recruitment exercise in the same way as it would for a permanent employment position.

Many employers run an internship programme at a particular time of year and will therefore carry out a recruitment exercise on an annual basis, for example by advertising a summer placement targeted at students.

As a minimum, employers that offer internships should include a statement on their organisation's website inviting applications for internships and provide basic details of what the placement would involve.

Publicising the internship will reduce the risk of limiting the pool of potential applicants to those with existing personal connections to the organisation.

It is for the employer to decide whether or not it will hold formal interviews for the internship. This may not be necessary for a short work-shadowing placement, but for a more formal internship the employer is likely to want to interview candidates (as well as possibly using other assessment methods) to ensure that the selection process is fair and that the best candidate is selected.

Are interns entitled to the national minimum wage?

Internships offered on an unpaid basis are still common in some sectors, with candidates prepared to accept them even where they are entitled to the national minimum wage.

While some employers rely on the assumption that few interns will bring a claim to enforce entitlement to the national minimum wage and risk damaging their chances of getting a foot in the door of their chosen industry, other employers may be unaware that the obligation to pay the national minimum wage can apply in relation to internships.

Interns will be entitled to be paid the national minimum wage if they fall within the definition of a "worker" under s.54(3) of the National Minimum Wage Act 1998. The definition includes anyone who works under a contract of employment or any other contract, whether express or implied, and if express whether written or verbal, under which they agree to do or perform personally any work or services for the employer, where the status of the employer is not a client or customer of the individual.

When determining whether or not an intern is a worker, the biggest factors are likely to be the work or duties that the employer gives them and whether or not the intern has a contractual obligation to perform them.

If an intern is asked only to "shadow" other members of staff and is not asked to do anything that is unsupervised, they are unlikely to be a worker, and would not be entitled to payment.

However, any internship whereby the intern has a contractual obligation (which could be express or implied and does not have to be in writing) to perform work for the employer will result in their being entitled to be paid the national minimum wage, subject to certain exceptions.

Although there have not been many reported cases in this area, it is clear that tribunals are willing to look at the reality of the relationship between the parties to determine the intern's status and entitlements.

Employers should consider not only their legal obligation to pay the national minimum wage to interns who work or provide services for them, but also the broader benefits to the organisation of paying interns a fair rate for the work that they do. Paying a fair rate is likely to encourage loyalty and productivity from the intern and will help the organisation to attract the best candidates. Unpaid internships (especially wrongfully unpaid internships) could be damaging to the reputation of the organisation as an employer.

Can interns agree to work as unpaid volunteers?

Under s.44 of the National Minimum Wage Act 1998, certain volunteers are not entitled to the national minimum wage. The conditions set out for a volunteer to fall within this exemption are that they work for a charity, voluntary organisation, associated fund-raising body or statutory body, and receive no payment

except reasonable expenses that can be attributed to the performance of their duties, or reasonable accommodation or subsistence.

Therefore, this exemption is unlikely to cover interns working in commercial organisations.

Under reg.53 of the National Minimum Wage Regulations 2015 (SI 2015/621), a student attending a further or higher education course is not entitled to be paid the national minimum wage in respect of a period of work experience if the work experience does not exceed one year and is a requirement of the course. This exemption is unlikely to be relevant to most internships.

It is not open to a worker who does not meet the requirements under the relevant exemptions to agree to work as an unpaid volunteer. Such an agreement would be void and ineffective; the intern could bring a national minimum wage claim against the employer, notwithstanding that they had agreed to work unpaid or for a rate below the national minimum wage.

Other employment rights for interns

An intern will be entitled to be paid the national minimum wage if they meet the definition of a worker. As a worker, they will also benefit from a number of other employment rights, including protection from discrimination under the Equality Act 2010, and the provisions of the Working Time Regulations 1998 (SI 1998/1833). Therefore, the intern will be entitled to the statutory minimum paid holiday and rights relating to breaks, rest periods and working hours. Entitlement to annual leave should be prorated for the period of the internship. If the intern does not take annual leave during the internship, the employer must pay them in lieu of the annual leave accrued at the end of the internship.

Statutory sick pay (SSP) is available only to employees, not workers. Depending on the nature of the working relationship between the employer and the intern, it is possible that an intern could meet the definition of employee. If they do, the employer must pay the intern SSP if they meet the other qualifying criteria (which include the requirement to earn at least the lower earnings level for national insurance purposes).

Whether or not an intern is an employee rather than just a worker will depend on the nature of the relationship, taking into account factors such as the existence of mutuality of obligation and the extent of control that the employer has over the intern's work.

Employers should be aware of the possibility of the internship being found to amount to an employer/employee relationship and of the rights to which the intern will be entitled if this is the case. For example, if the intern is an employee they will gain the right to claim unfair dismissal and the right to a redundancy payment after two years' service, although internships that last long enough for the intern to gain these rights are rare.

Employers have the same responsibilities towards all interns in relation to data protection as they do towards employees or other data subjects. The employer must provide interns, and applicants for internships, with a privacy notice when it obtains their personal data (for example their contact details and information about their work history). The privacy notice must set out specified information about how the employer will use the personal data, including the purposes and legal bases for processing it and how long it will be retained.

Unpaid internships

If an organisation does not intend to pay an intern the national minimum wage, for example where the purpose of the internship is only to provide the intern with experience of the working environment, the employer can give them the opportunity to shadow other employees or perform basic tasks under supervision but should not place them under an obligation to perform the work.

The employer should ensure that the intern has no personal responsibility within the organisation and is not asked to deal directly with clients or customers.

It should also ensure that the reality of the relationship does not give room to imply that there is control by the employer over the intern's work, any mutuality of obligation, or a requirement for personal service from the intern. Therefore, the employer should not seek to deal with the intern in the same way as it would its employees. If the intern turns up late, or not at all, their suitability for any future role may be questioned, but it would not be appropriate for the employer to invoke any formal disciplinary action over the absence or lateness, except to ask the individual not to return to the workplace.

The employer should provide the unpaid intern with a basic introduction to the organisation at the beginning of the placement, explaining what the internship will involve and introducing them to the people with whom they will be working. As a minimum, the employer should provide the intern with any necessary health and safety information, such as the fire safety procedure.

Paid internships

A formal internship programme under which the employer pays the intern at least the national minimum wage rate is likely to provide greater benefit to both the organisation and the intern than an unpaid placement.

The employer will be able to require the intern to perform work, give them more responsibility and require them to perform to a certain standard.

Furthermore, an employer that runs unpaid internships risks limiting the pool of potential candidates, as people from better-off backgrounds are more likely to be in a position to be able to spend time on an unpaid placement.

The rest of this guide assumes that the employer does not intend to avoid the intern obtaining worker status and the right to be paid the national minimum wage.

The employer should provide the intern with details of the rate of pay, an explanation of their duties and other information relating to the role, such as working hours. If the intern will have employee status, the employer must give them a written statement of employment particulars in accordance with s.1 of the Employment Rights Act 1996.

Induction

The employer should provide an induction for the intern, tailored to the length and nature of the internship. For longer internships, the induction could be the same as that provided to permanent employees.

Regardless of the length of the internship, the employer should advise the intern of all relevant health and safety procedures, such as the procedure relating to fire safety, and should provide any training necessary to enable the intern to carry out their duties safely.

The employer should ensure that there is a particular member of staff who has responsibility for supervising and supporting the intern, and that the intern is aware that they should contact this individual with any concerns.

Monitoring during the placement

To ensure that both parties get the most out of the internship, the employer should consider how it will monitor and record the intern's performance and progress.

Having a record of the internship will help the employer if there is a possibility that it will lead to a permanent job, or a future application for employment once the intern has graduated or gained further experience.

The process of collating feedback on the intern can be as formal or informal as the employer wishes. As a minimum, the person responsible for supervising the intern should meet with them regularly to discuss their progress and to address any concerns that either party may have. A more formal approach would be to prepare a training plan at the outset of the internship, with objectives for the intern to achieve over the course of the placement, and to assess their progress against the plan.

This approach would help the employer to get the most out of the intern by setting out clear expectations, and by ensuring that they have the support and training necessary to enable them to make a worthwhile contribution to the organisation.

The approach that the employer takes to misconduct, and performance issues is likely to depend on the length of the internship and the nature of the intern's role. For example, if the intern deals with clients or carries out an essential role in the organisation, the employer should deal effectively with any disciplinary issues to avoid damage to the organisation's reputation or productivity.

The employer should ensure that it follows a fair procedure and takes a consistent approach when disciplining interns, to avoid the risk of discrimination claims.

Exit interviews

Employers should seek to gain some benefit for themselves from any form of internship. As well as being an opportunity for the intern to gain work experience, the internship gives the employer the chance to look at the quality of potential future candidates for employment.

With this in mind, the employer should consider holding an exit interview with the intern, however long they have been with it.

Such a process gives both parties an opportunity to give and receive feedback. It may also be an opportunity for the parties to establish the intentions of the other in relation to future employment opportunities and for the employer to ensure that its internship programme is being run effectively and identify any areas for improvement.

References

There is no legal obligation to provide a reference, but it is good practice for an employer to provide a reference in relation to an intern if requested.

It is possible that it will be the intern's first available reference, if they have little previous work experience, and it will be key to demonstrating that they have the skills and experience required for future employment.