



Matt Gingell™

Making sense of employment law

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Paying interns: A guide for HR professionals

In some cases businesses have to pay interns. It depends on what the intern is doing and their classification.

WORKERS AND EMPLOYEES

Workers and employees, generally, have certain rights, such as entitlement to the national minimum wage and paid annual leave. Employees also have additional rights, such as the right to statutory sick pay and protection from unfair dismissal (normally subject to two years' service). It's therefore important to determine whether the intern could fall within one of these two categories.

For worker and employee status there needs to be "mutual obligation", which is a minimum requirement for a contract to actually exist. This means that each party must have an obligation to fulfil their side of the bargain. The question is: does the business have an obligation to provide work and is the intern obliged to turn up and work?

To be deemed a worker, the individual must also be obliged to provide work or services personally, rather than sending another person in their place, and they must not be providing the work or services as a business.

To be considered an employee, again the work or service must be done by the person under contract, but there also needs to be an element of control by the employer over the employee. Other factors for determining status could be considered, too.

What is written in the contract or internship agreement does not determine status, and it's what's happening in practice that counts.

THE INTERN ARRANGEMENT

Where the business is providing set tasks which the intern is obliged to carry out, the intern will usually be a worker and, in most cases, must be paid.

By contrast, interns that have looser arrangements with the organisation and shadow (rather than perform set tasks), could fall outside the worker protection.

THE NATIONAL LIVING WAGE (NLW) and NATIONAL MINIMUM WAGE (NMW)

The NLW of £7.50 an hour must normally be paid to workers aged 25 and over, and the NMW, with lower rates, continues to apply to most workers aged 24 and under. There are a few exceptions to NLW or NMW entitlement though; one of them being work experience placements not exceeding one year undertaken by students as part of a UK-based higher education or further education course.

NO LEGAL OBLIGATION

There are good reasons to pay interns even when you don't legally have to. If you don't offer payment you may well be excluding able people who can't afford to do an internship for free. By offering to pay interns you're widening your pool of talent.

**This guide is intended for *guidance* only and should not be relied upon for specific advice.
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For Employment Law Advice Contact