



## HOW NEW REGULATIONS MAY AFFECT INTERNS

NEWSDAY ILLUSTRATION BY NED LEVINE

newsday.com

NEWSDAY, SUNDAY, MARCH 11, 2018

### UNPAID INTERNSHIPS COULD BECOME MORE COMMON AS RULES ARE LOOSENED

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Interns hoping to get a full day's pay might find it tougher to do so under revised federal guidelines that help determine whether an internship should be paid.

The new rules give employers more flexibility in taking on

unpaid interns, experts said.

Unpaid internships have been around for decades. But the U.S. Labor Department in 2010 developed more stringent guidelines about when interns must be paid. The department instituted a six-part test, and employers had to satisfy every element in order to declare an internship unpaid. One of the

key rules: If the intern's work benefited the company, the intern had to be paid. (One exception was when students got college credit for their work.)

But courts ruled that the guidelines were too rigid and instead looked at who benefited the most from the employer-intern relationship. In response, the Labor Depart-

ment's revised its rules, and the new policy went into effect in January, giving companies far more leeway in how they compensate interns.

The new policy consists of a seven-part test that focuses on whether interns are the "primary beneficiary" of an intern-employer relationship. If the interns are judged to be the pri-

mary beneficiary of the job, they can legally perform work without being paid.

"The courts were really having a hard time with the prior six-factor test," said employment lawyer Scott Green, a partner at Rivkin Radler in Uniondale.

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# New rules may put

## Companies could offer more unpaid positions

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The result, some experts believe, is that companies will find it easier to offer unpaid internships.

"It is certainly opening the door for that, and we may see that," said Phil Gardner, director of the Collegiate Employment Research Institute at Michigan State University in East Lansing.

### Hardship for some

The revised guidelines could make it harder for college students who need a paycheck to get the exposure to careers and employers that a paid internship offers.

"I have to pay for school for myself," said Tyler Meaney, 21, a senior who is an accounting major at Molloy College in Rockville Centre. "I would never be able to" afford an unpaid internship.

Another student cited similar circumstances.

"I need to pay for my apartment and my tuition, so I need a paid internship so I can afford to do that," said Larry Dwyer, 20, a sophomore and mechanical engineering major at Stony Brook University who was waiting in line recently to attend a university job fair offering internships.

Some students are so eager for work experience, however, that they said they would accept an unpaid internship.

"I would definitely take it," said Vishwanath Gurumurthy, a 24-year-old MBA student from India at Adelphi University in Garden City. "It's more about learning. We are getting an opportunity to translate knowledge into work."

Internship programs are popular. For example, Adelphi said that about 63 percent of its graduating seniors participated in an internship pro-

gram, according to a research bulletin in December 2017.

A survey released last spring by the 3,000-member Pennsylvania-based National Association of Colleges and Employers projected that employers would hire 3.4 percent more interns in 2017 than the year before.

Whether a student gets paid often depends on the industry he or she is joining, and the size of the employer.

A 2016-2017 Recruiting Trends survey from Michigan State's research institute found that 23 percent of small employers — those with fewer than 100 employees — were more likely to offer unpaid internships, versus 5 percent of the largest employers.

Ninety-percent of Long Island's nearly 97,000 companies have fewer than 20 employees, U.S. census data show.

The industries with the highest percentage of unpaid internships include arts and entertainment, government, nonprofits and health care and social services, the research institute said.

Those industries most likely to pay interns include utilities, business, scientific services and construction.

### Lawsuit setbacks

The new federal regulations making it easier to offer unpaid internships were prompted by lawsuits filed by interns around the country claiming they should have been paid for their work. The U.S. Court of Appeals for the Second Circuit, in Manhattan, whose jurisdiction includes New York, heard two such cases on appeal, the latest in December. In the latter case, unpaid fashion and editorial interns sued the Hearst Corp., claiming the company violated the Labor Department's guide-



At Adelphi, Vishwanath Gurumurthy says internship is about learning; Lani Chau, center, and Lentz

lines. They appealed after a district court dismissed their claim.

The Second Circuit also ruled against the interns. It said that the department's previous all-or-nothing-approach to the intern-versus-employee relationship was too rigid and that the employer need not meet all elements of it to declare some-

one an intern who need not be paid.

Under the old test, interns could possibly go unpaid if "the employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may be actually impeded."

That condition struck employers and their lawyers as

unrealistic.

"If the employer didn't benefit in a little way, why would they invest all their time in supervising, mentoring and guiding an intern?" said Marianna Savoca, director of Stony Brook University's Career Center.

That requirement has changed.

"Now it's okay for an intern

# squeeze on interns



PSEG recruiter Sophia Lewis greets Theodore Wang at a recent Stony Brook University job fair. With paid internships, she said, "You're getting the top talent" in the pipeline for future employment.

trepreneurs with cool ideas to grow their businesses, not on the backs of college students but in partnership with the students and the universities," said Savoca, the Stony Brook career director. "That includes stipends and fair wages."

## Issue of diversity

Concerns about diversity may also drive paid internships, Kyriakides of Hofstra said.

"It opens up opportunities, and from a business perspective it gives you a much bigger talent pool to work with," she said.

That was evident from some Long Island interns interviewed for this story.

Lani Chau, a 22-year-old senior and physics major at Adelphi, said she was able to accept two internships only because they were paid. That money helped cover the cost of her daily four-hour round-trip train and bus commute from her home in Shirley to the Cradle of Aviation Museum in Garden City, where she worked in the planetarium in the summer of 2016.

"I am a first-generation student and not from a wealthy background," said Chau, who was born in Vietnam and immigrated with her family at age 8.

Lentz Lefevre, a 36-year-old Haitian-American and a student in Adelphi's MBA public health program, said his university-sponsored, paid internship with the American Red Cross in the summer in Manhattan helped him afford a four-hour round-trip train commute from Huntington.

"The internship certainly helped with the finances in terms of travel expenses," Lefevre said.

Some students said a paid internship just makes work seem more like a real-world experience.

"I believe a paid internship gives a sense of professionalism," said Kevin Sebastian, a 21-year-old junior and accounting major at Molloy. "If it's unpaid, I feel it may be confused with volunteer service."

## INTERN NUMBERS

A 2016-2017 Recruiting Trends survey from Michigan State University:

- **23 percent** of small employers — those with fewer than 100 employees — offered unpaid internships, versus 5 percent of the largest employers.
- **90 percent** of Long Island's nearly 97,000 companies have fewer than

20 employees, U.S. census data show.

- **The industries with the highest percentage of unpaid internships** include education services, nonprofits, health and social services and entertainment.
- **Those industries most likely to pay interns** include utilities, business, scientific services and construction.

"It made employers very concerned and wary about going ahead and allowing interns in their workplace in an unpaid situation," she said.

## Trend toward pay cited

But other indications suggest that the previous guidelines boosted paid internships.

During the school years 2011 to 2016, among employers using interns the percentage offering paid internships rose from 66 percent to 71 percent, data from Michigan State's research institute show.

"In general we have seen a trend over the past several years that more and more internships offered are paid, especially if they are at for-profit organizations," said Michelle Kyriakides, the executive director of Hofstra University's Career Center.

It may be too soon to tell what effect the new criteria will have because of the various factors driving paid internships.

For some employers, internships help supplement their workforce and provide a pipe-

line to future employees. To attract the best students they offer paid internships.

"You're getting the top talent," said Sophia Lewis, lead talent acquisition specialist at PSEG Long Island in Uniondale, who recruited at the Stony Brook job fair last month.

Chuck Marcelin, talent acquisition manager at Softheon, a health care software company, which grew out of a Stony Brook incubator, said that to fill the software engineer and product manager jobs in its summer program the company must offer paid internships.

## Competition for interns

"They are getting competing offers from Google and Facebook, and we have to be as competitive," Marcelin said.

Some college career experts said their schools will continue to push for paid internships, which many said most of their students obtain.

"We have to figure out how we can help these en-

## LeFevre say pay is crucial.

to do useful work and still be an intern who is not entitled to minimum wage," said Richard Kass, a partner at the Bond, Schoeneck & King law firm in Manhattan.

The earlier more restrictive requirements had put a damper on internships in general, said Dominique Camacho Moran, a partner at the Farrell Fritz law firm in Uniondale.