

INTERNS – NOT EMPLOYEES YET . . . OR MAYBE

The end of the spring semester is here, which means young people (some of whom may be graduating from high school or college) are ready to begin professional internships. This isn't just a great way for students to expand their skills and build their networks. Employers can take advantage of their labor for relatively low cost, while also building a "bench" of possible future hires, already familiar with the culture and trained in accordance with the company's business needs.

However, employers should exercise caution when offering someone an "internship." What you choose to call the position is immaterial – what matters is the type of work, the duration of employment and the hours worked during that time. Your particular definition of "student," "seasonal" or "trainee," for example, may not match that of the Fair Labor Standards Act (FLSA) or the Affordable Care Act (ACA). In some cases, interns may actually be employees, making them eligible for unemployment benefits, worker's compensation and perhaps even

the employer's benefit plan. Take steps now to ensure your company's internships do not include potential wage and hour or benefit pitfalls.

WHEN MUST INTERNS BE PAID?

Internships are frequently unpaid, especially with public sector and non-profit organizations. However, a "for profit" employer may be compelled to pay an intern if they run afoul of the "primary benefits test" described in the Department of Labor's Fact Sheet #71. The test is flexible and each internship will have unique circumstances. However, if the employer cannot meet most of the seven criteria of the test, it is strongly encouraged that the "intern" be paid at least the prevailing minimum wage:

1. The intern and the employer both clearly understand that there is no expectation of compensation.
2. The internship provides training similar to that given in an educational environment.



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3. Completion of the internship will provide academic credit, or is otherwise integrated in the intern's coursework.
4. The internship corresponds to the intern's academic calendar.
5. The internship is limited to the time in which the intern is provided with beneficial learning.
6. The intern's work complements that of paid employees, and does not displace them.
7. The intern and employer both clearly understand that there is no promise of a paid job after the internship is completed.

Let's consider two summer interns, to determine if they must be paid based on the primary benefits test. Sarah, majoring in marketing, begins her internship with the employer's marketing department after the school year ends. She is assigned to a project that builds upon her coursework, working under the guidance of the existing team. Sarah's internship ends two weeks before her next semester begins, which corresponds with the completion of the project.

Bob begins his internship at the same time, working mostly in the human resources department, where he performs jobs like shredding old files, proofreading documents and filling in for the receptionist who leaves early on Friday afternoons. However, his major is in accounting, and he is receiving no practical experience in his field. In addition, after Bob arrived, a clerk who used to do these tasks was reassigned to the warehouse, in a lower-paying position.

DID YOU KNOW

- Sixty-three percent of Americans say they are financially stressed or anxious.
- Seventy-one percent believe they will continue working after retirement (including those who think they won't retire at all).
- Eighty-five percent trust the financial advice they receive from their current employer.
- Sixty-eight percent of men are currently investing in a retirement savings plan, versus only 48 percent of women.
- Twenty-four percent are not participating in a retirement savings plan because they are unable to afford it with their income.

Source: Mercer, "Healthy, Wealthy and Work-Wise: The New Imperatives for Financial Security," US Key Findings, 2018

Sarah's internship satisfies the primary benefits test, and can thus be unpaid. Bob, however, should be paid at least minimum wage for his work, as his "internship" had no relation to his academic work and career training. Further, another employee was essentially demoted as a result, which means the employer financially profited from using an unpaid intern.

In some cases, for-profit employers may find it easier simply to pay interns at least minimum wage. In that way, they do not have to be concerned if an intern performs tasks that are not related to his or her studies, and could also continue a student's employment regardless of the academic calendar.

WHEN MUST INTERNS BE OFFERED MEDICAL COVERAGE?

Under the ACA, an applicable large employer, who had 50 or more full-time equivalent employees in the previous year, must offer medical coverage to employees working at least 30 hours per

week. The IRS considers a paid intern to be an employee, so in some cases the employer may have to offer the intern coverage. For example, if an intern is regularly scheduled to work 40 hours per week, then he or she must be offered medical coverage after 90 days of employment at the most. Failure to do so may trigger a penalty under the ACA's employer mandate.

An exception is made for "seasonal employees," whose hours the employer is measuring using the look-back method. A seasonal employee is employed for no more than six months, around the same time each calendar year, to perform work that is specific to the season. This means a student hired to wrap holiday presents, or to serve as a lifeguard in a public pool, could meet the definition of "seasonal." But Sarah and Bob, the interns discussed earlier, are not seasonal workers. Their job responsibilities could be performed year-round. We've already determined that Sarah's internship can be unpaid, so she does not

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have to be offered health coverage. Bob, on the other hand, must be paid, and his employer must extend the medical plan to him as well, depending on the length of his internship.

The easiest way to circumvent this issue is to keep an intern's work hours to fewer than 30 per week. If that isn't feasible, the duration of the internship could be limited to fewer than 90 days, with the intern not being rehired until at least 13 consecutive weeks have elapsed.

Even the "worst-case" scenario is not bad, however. An intern is probably covered by a parent's plan, and is thus unlikely to elect their own employer's plan for just a couple of months.

An internship can provide a valuable experience to the student and also to the employer, who has an opportunity to foster the career growth of an individual who could potentially become a valued employee. By taking a few simple precautions with regard to the scope of assignment and

work schedule, an employer can maximize an intern's benefit to the company and limit the financial impact. *MMA*

WHAT EMPLOYERS CAN DO TO SUPPORT EMPLOYEES' MENTAL HEALTH

According to Mental Health America's 2019 State of Mental Health in America report, over 18 percent of adults nationally have some kind of mental illness, and over 56 percent of those received no treatment. These numbers should be alarming to employers. A lack of effective mental and behavioral treatment doesn't just adversely affect the employee's health and wellbeing – it has a tangible impact on the workplace. An individual with untreated mental illness – as with any other acute or chronic illness – is more likely to have lowered productivity and possibly increased absenteeism.

What can an employer do to help their employees?

Above all, the employer should cultivate an environment without stigma, where employees feel comfortable seeking treatment and, when necessary, requesting accommodations.

Employees are often embarrassed or ashamed of their mental illness, especially in a work environment where they are concerned about how others will perceive them. They may worry about losing their jobs, or having their career prospects dimmed.

Employers can take several steps to allay these fears. **First – and perhaps easiest – is to be sensitive to your language.** It's become common to hear the terms "schizo" and "bipolar" used to refer to people in a derogatory way. But schizophrenia and bipolar disorder are among the most serious mental illnesses, and using these terms can be distressing to those

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YOUR QUESTIONS

- Q.** I just learned that an employee, required by a qualified medical child support order (QMCSO) to cover his child, was able to view the child's address in our benefits administration system. He is not the custodial parent. While our insurance carrier has a code that we can use in these situations, to keep confidential the address of custodial parent and the child, it seems our benefits administration system does not contain a similar safeguard. Should I be concerned?
- A.** Yes, you should be concerned. It is the employer's responsibility to maintain the confidentiality of the child's information when a non-custodial parent is ordered via medical support order to provide coverage. First, you should work with the benefits administration vendor to make sure they have the ability to shield this information when the employee logs into the system. If they do not have this functionality, creating it should be their immediate priority.

Next, confirm that your employee cannot access this information in other ways. For example, ensure that information specific to the child and custodial parent is blacked out if the employee requests a copy of the medical support order.

Finally, consult with legal counsel to see if there are any issues that arose as a result of this inadvertent disclosure. You may be advised to notify the custodial parent of the breach.

TREND TIDBITS

- \$ Michigan cost increases overall were 5% before plan changes in 2019.
- \$ Michigan cost increases overall after plan changes were 3% in 2019.
- \$ Michigan average PPO plan costs were essentially the same in 2019 as they were in 2018.
- \$ Michigan average CDHP plan costs increased 1% in 2019.
- \$ Michigan average HMO plan costs increased roughly 1% in 2019.

Source: 2019 MMA MI Mid-Market Group Benefits Survey

who may be living with these conditions. Just like it is not appropriate to use racial and ethnic slurs, it is also damaging to use words that only compound the stigma of mental illness. If you hear someone using such language, remind them of how hurtful it can be.

Next, recognize that mental health is not just “in your head.” People cannot force themselves out of depression, for example, any more than others can force themselves out of diabetes. Mental illnesses are physiological disorders like any other health condition, and must be viewed accordingly. If an employee’s behavior or attitude has become problematic, or they seem to be struggling emotionally, reach out in a non-judgmental way, to see if they need or want assistance. If you have an employee assistance program (EAP), begin by offering the EAP brochure. Let the employee know the EAP is a confidential resource that the organization provides to employees and their immediate family members. The EAP offers support when they need it. Be authentically empathetic, so the employee feels cared for and valued as a person.

Take a closer look at the mental and behavioral health and substance use coverage in your medical plan. The Mental Health Parity and Addiction Equity Act, which applies to companies with 50 or more employees, requires plans that cover mental health and substance abuse services to cover these services the same as medical and surgical services. For example, there cannot be an annual maximum placed on behavioral counseling visits, if there is no similar annual maximum for other medical office visits. The Affordable Care Act (ACA) mandates that specific “essential health benefits” be covered by the small group (under 50 employees) insured health plans. This includes treatment for mental health and substance use disorders, and includes services such as counseling and psychotherapy.

People often fail to seek mental health treatment due to the cost. Even when network providers are available, outpatient counseling may be subject the same deductible and coinsurance as surgical services, and not a flat-dollar copayment like office visits. If you think cost is discouraging employees from getting treatment, you may want to look at making plan

design changes to the mental health benefit, to make it more affordable for members.

If you try to engage employees in company-sponsored wellness initiatives, consider one that focuses on mental health.

Often such challenges target weight control, or eating more fruits and vegetables. However, it is likely that at least one in five employees is living with a mental illness, so such an initiative could be extremely relevant, especially to people with depression, anxiety and/or panic attacks. For example, challenge employees to get more sleep, or distribute journals where employees can keep track of what they’re grateful for. Bring in a vendor to teach meditation techniques.

Mental illness can range from mild to severe, and is a very common health condition. Employers should remain aware of this, and create an environment where employees feel free to ask for help when they need it. Fostering a stigma-free environment, where employees know they are supported in various ways, can go a long way toward alleviating fear and embarrassment, thus having a positive effect on productivity and engagement. MMA

Technical Corner

Are you sure that the programming in your benefits administration system is properly aligned with the age-banding and age reduction provisions in your life and disability policies? This is especially important if you are calculating the volume and premium using data from your enrollment system. However, it may also affect older employees at the point of claim. Here are some things to examine closely:

- **When do age changes affect premium?** Voluntary life and voluntary disability coverage are typically age-banded, which means the cost for an employee (and often, the spouse) increases every five years. If an employee is entering a new age band, does the change in premium take effect on the first of the month following the applicable birthday, or in conjunction with the plan's renewal date? For example, an employee may turn age 45 in April, thus entering a new age band, but the plan renews on January 1. When does his premium increase?
- **How does age banding apply to new hires?** A new hire will probably enroll for benefits mid-year. What age is used to determine the new employee's cost for coverage – the employee's actual age as of the date of benefits eligibility? Or the age that the employee will attain during the plan year?
- **When do age reductions occur?** Similarly, an employee's basic and voluntary life coverage will typically be reduced upon turning age 65 or 70, and may be subject to additional reductions after that. For example, an employee's coverage may be reduced by 35 percent of the original amount at age 65, and then by 50 percent of the original amount at age 70. If an employee turns age 65 in June, for example, but the plan renews on January 1, when is his coverage amount reduced? Does the reduction happen concurrently with his change in premium? Is his change in premium then based on the reduced amount of coverage?
- **How is the spouse's premium for life coverage affected?** In some plans, the cost for voluntary life coverage for the spouse is linked to the employee's age. Regardless of the spouse's age, his or her premium will rise with that of the employee, and will be subject to age reductions at the same time. But in other plans, the spouse's premium and age reduction are based on the spouse's age. How is this addressed in your policy?

These are questions that should be asked during the implementation process with a new carrier or a new benefits administration system. However, it may be a good idea to audit your carrier documents and check with your benefits administration vendor to ensure that the system correctly reflects the terms of your life and disability policies. If your benefits administration system has been in place for a while and you have not changed carriers recently, you may notice a disconnect between the plan and programming. *MMA*

LIABILITY LESSONS

Do companies ever wonder what the uninsured and underinsured motorist (“UM/UIM”) coverage means on their business auto policies? Is this a coverage that is required by the state? What are the advantages and disadvantages of this coverage? From a risk management standpoint, what should companies think about before making a decision to purchase this coverage?

We find that most business auto policies include UM/UIM coverage, but certainly not all of them. A typical limit is around \$1,000,000 per person per accident.

Simply put, this coverage applies to employees who are involved in a not-at-fault auto accident while driving a company car, when the at-fault driver does not have sufficient liability limits or perhaps has no coverage at all.

In the State of Michigan, a business is not required to purchase UM/UIM coverage. Some would argue that it is unnecessary because the employee is typically covered for their wage loss and medical expenses as part of their worker’s compensation claim. In addition to worker’s compensation, the injured employee might also receive personal injury protection benefits under their employer’s no-fault auto coverage. In both cases it is important to note that the workers’ compensation and the no-fault auto coverage only cover economic damages, like medical bills and wage loss. An easy way to think about economic damages is that they typically have an invoice, bill or receipt, such as emer-

gency room costs, ambulance bills, medication, etc. Neither the worker’s compensation policy nor the no-fault auto policy will cover non-economic damages like pain in suffering or loss of relationship. These are things that are difficult to quantify. By comparison, UM/UIM coverage would apply to both economic and non-economic damages.

Even if the business does not purchase UM/UIM coverage, many employees still have UM/UIM coverage as part of their personal auto policy. In most cases their personal coverage would extend to a work-related accident while driving a company vehicle.

Business owners should keep in mind that UM/UIM claims tend to be very expensive and could easily reach into the millions of dollars. UM/UIM claims of this magnitude will often result in significant increases to future auto premiums, and in some cases non-renewal by the insurance carrier.

On the other hand, some businesses are looking for ways to provide broad coverage to their employees in order to attract talent and to reduce employee turnover. Certainly UM/UIM coverage is one example of an important employee benefit, if properly communicated.

There are pros and cons to purchasing UM/UIM coverage. Companies should take a close look at the UM/UIM benefits on their business auto policies and determine whether changes are needed. MMA



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