



Welcome to the Cooperative Education & Internship Association
Professional Development Webinar,

‘Legal Issues In Experiential Learning’

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Hosted by David Snow, Drexel University
August 21, 2019

Other Upcoming Events!!!

2019 CEIA Annual Conference, San Diego, CA
Strategies for Submitting CEIA Award Nominations, September 10, 2019

Outline

- Employer Drug Testing
 - Workplace Issues
 - Worker's Compensation
 - Unemployment
 - Payment Issue
 - Student Tax Information
 - Accommodations for Disabilities
 - Affordable Care Act
 - Questions
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Employer Drug Testing & Criminal Records Disclosure

- Courts have found in favor of the legality of requiring a pre-employment drug test as a condition of employment on a consistent basis.
 - Best practice to obtain consent and to clearly indicate drug testing is a requirement for employment.
 - Often Regional & Job Specific Reasons for Testing/Background Checks
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Employer Drug Testing & Criminal Records Disclosure

- What is usually tested?
 - Most employers utilize a standard five-panel test of "street drugs," consisting of Marijuana (THC), Cocaine, PCP, Amphetamines (including methamphetamine), and Opiates (such as codeine, fentanyl, oxycodone, and morphine).
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Employer Drug Testing & Criminal Records Disclosure

- **Discuss Coop postings that require drug testing and/or criminal records check**
 - **Your conversations and guidance may not be required to be disclosed to Office of Student Conduct/Judicial Affairs (at present time)**
 - **If educational institution is told by potential Coop Employer that their student failed a drug test, at some schools THAT MUST BE REPORTED to Office of Student Conduct**
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Workplace Environment

- Interns/co-ops are entitled to a non-threatening work environment
 - All of the same harassment and non-threatening work environment standards held at your institutions apply to your employers:
 - Workplace free from harassment
 - Workplace free from discrimination
 - Particularly important for young people entering the workplace:
 - Sexual harassment/discrimination
 - Racial harassment/discrimination
 - Religious harassment/discrimination
 - Your students need to know they are entitled to a fair work environment, too...even though they are younger and less experienced!
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Worker's Compensation

- **Worker's Compensation is governed by state law.**
 - This means the laws applicable to the employers of your students will vary depending on the state in which they are working.
 - **Worker's Compensation is typically required for interns/co-ops.**
 - **Example from PA Law:**
 - “All natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer...” (PA Worker's Compensation Act, Article 1, Section 104)
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Unemployment

- **Unemployment is governed by a combination of state and federal laws.**
 - **Interns/co-ops generally do not qualify for unemployment**
 - **Temporary employees**
 - **Receiving credit**
 - **Specific exceptions**
 - **Sample exception language from PA Law:**
 - **Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer... (PA Unemployment Compensation Act section 4(l)(4)(10)(B) and (C))**
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To Pay or Not to Pay

The Fair Labor Standards Act (FLSA)

- Defining “Employ”
 - To suffer or permit to work
 - If employed, must be compensated
 - “For-Profit” Private Sector
 - Internships/co-ops most often viewed as employment
 - Exception for “trainees”
 - For Trainee: “Primary Beneficiary Test”
 - For Employee: Typically must be paid at least minimum wage (and overtime).
 - Exceptions for public sector and non-profits
 - Examples: government agencies, religious/charitable/humanitarian organizations
 - Intern volunteering freely and with no expectation of compensation
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The Test For Unpaid Internships

- Definition of “employ” cannot apply in cases where the work being done serves only employee’s own interest.
 - This would, particularly, include cases where employer is providing aid or instruction.
 - This may apply to interns who receive training for their own educational benefit if the training meets certain criteria.
 - All facts and circumstances of each individual program used in making determination.
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Recent Unpaid Internship Case Development

- **Second Circuit Court of Appeals** ruling on 7/2/15.
 - *Glatt v. Fox Searchlight Pictures* and *Wang v. The Hearst Corporation*
 - Many instances unpaid interns may not be employees covered by FLSA and New York Labor Law (“NYLL”).
 - Second Circuit rejected rigid six-point test decreed by the U. S. Department of Labor to determine whether interns should be considered employees.
 - Established new “Primary Beneficiary Test,” which has since been adopted by the Department of Labor.
 - Court established that each case is unique and very fact-specific.
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Primary Beneficiary Test

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation;
 2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions;
 3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit;
 4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar;
 5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning;
 6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and
 7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.
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Where to Obtain Additional Information

- For additional information, visit the Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866- 4USWAGE (1-866-487-9243).
 - Also helpful is the law itself, published at <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>
 - U.S. Department of Labor
 - Frances Perkins Building
 - 200 Constitution Avenue, NW
 - Washington, DC 20210
 - **1-866-4-USWAGE**
 - TTY: 1-866-487-9243
 - * This presentation is not intended to serve as a substitute for seeking the advice of legal counsel. Be sure to speak with your University's legal department to learn about the legal issues impacting your students.
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Student Employee Tax Information

- Federal Tax Filing: Yes or No?
 - U.S. source of derived income or U.S. citizen / resident alien, tax return filing required in U.S.
 - Stipends: Always taxable and reported as income
 - Federal, State, and Local/City
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Student W-2s

- W-2 form is issued by employer who records wages earned during previous year
 - All co-op/internship students on paid work experience should receive W-2
 - U.S. income tax must be paid on income earned abroad by U.S. citizen
 - No tax obligation for unpaid co-op/internship
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International Students - Tax Issues

- Social Security Card: F-1 student without SSN must obtain offer letter from employer to apply for one
 - Taxes: F-1 student pays all required federal, state, and city/local taxes. Exempt from FICA (Medicare & Social Security) taxes
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International Students - Tax Issues

- International Tax Filing: Nonresident must file appropriate form if either of two situations apply
 - Nonresident was “engaged in a trade or business in U.S.” any time during tax year; or
 - If not engaged in U.S. trade or business during tax year, had income that not all U.S. income taxes withheld
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Accommodations for Disabilities

- Occasional concerns of students with disabilities
 - Tools for job search or interview process
 - Should or how to disclose disabilities
 - How to self advocate on the job to ask for accommodations
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Accommodations for Disabilities

- Title I of American Disabilities Act (ADA) protects people with disabilities in work setting
 - Employers with 15 employees and more must adhere to protective legislation
 - Best practice is to refer students to your Office of Disability Services
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Accommodations for Disabilities

- **Prohibits discrimination against individuals with disabilities who are qualified: Employers under ADA cannot ask if an individual has a disability and cannot penalize based solely on existence of a disability in any aspects of a job as follows:**
 - **Job application**
 - **Hiring**
 - **Firing**
 - **Advancement**
 - **Compensation**
 - **Job Training**
 - **Job Duties**
 - **Other Terms, Conditions, and Privileges of Employment**
 - **Requires that reasonable accommodations be provided to eligible employees who submit their request and supporting medical documentation substantiating a disability.**
 - **<http://www.drexel.edu/scdc/professional-pointers/diversity/disabilities/>**
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Affordable Care Act

- Effective 2015, the Affordable Care Act (ACA) mandates that employers with more than 50 full-time employees must offer health insurance to full-time employees
 - “Full-time” under ACA means working 30 or more hours per week
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Affordable Care Act

- Employers are required to ensure adherence to ACA for all employees including paid co-op/internship positions
 - Most educational institutions require health insurance coverage for students' matriculation: Can share this with co-op/internship employers
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Factual Scenarios



Questions

Helpful Resources

- Michael Vitlip mvitlip@fandm.edu
 - David Snow das45@drexel.edu
 - **U. S. Department of Labor, Wage and Hour Division Website:**
<http://www.wagehour.dol.gov>
 - **Employment Standards Act, 2000**
S.O. 2000, CHAPTER 41, **Consolidation Period:**
From March 30, 2011 to the [e-Laws currency date](#).
Amended: 2011, c. 1, Sched. 7, s. 1.
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm#BK1
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