



Interns in Ireland - what business need to know *

Internships are a relatively new in Ireland. In some industries and particularly in start-ups they are seen as the way for individuals to gain relevant work experience and to increase their ability to obtain employment.

There is a difficulty for businesses. Internships are not regulated in Ireland with the exception of the JobBridge Scheme.

The issue which businesses face is that simply calling a person an intern does not mean that under the National Minimum Wage legislation or other legislation in Ireland the intern is not an employee.

What is an intern?

There is no legal definition of an intern under Irish Law.

Any business should be aware that depending on the type of work carried out by an intern and the reality of the day to day relationship between the intern and the business there is a risk that the intern will be deemed an employee by the Workplace Relations Commission, or the Labour Court on appeal or the Courts. If the intern is held to be an employee then they are entitled to the National Minimum Wage. They are entitled to all the other entitlements of an employee or the employer and to include such matters as Holidays which are paid, Public Holidays being paid and the full protections of Irish Employment Law.

For a business to decide whether an intern is an employee of the business or simply an intern there are a number of factors which need to be taken into account. The first is the level of control exercised by the business over the intern. This means whether or not there is an obligation on the intern to undertake work that is set by the employer. Any Industrial Tribunal will look at what the intern does. If you have an individual who simply shadows somebody to see how a job is done and other then following them around a seeing how it is done actually undertakes little or no work that person may well be an intern. If however the individual is undertaking real work, notionally as training, they may well be an employee. Having somebody follow a Solicitor as they do work during the day, meeting clients, going to Court, preparing documentation etc. is one thing. Having the intern photocopy documents, prepare booklets of documents for Court, going



down to Court to lodge documents or similar work may very well deem the individual to be an employee. Let me take the example of a coffee shop. If somebody is taken in as an intern and is then waiting on tables or preparing food it is going to be extremely difficult to argue that they are anything other than an employee.

Should interns been paid?

The issue as to whether the intern should be paid would depend on whether they are real interns or as might be described as disguised employees under the title of being called an intern. It would be our view that when an internship is purely educational and where the intern is only shadowing other employees in the business the issue of them being an employee for the purposes of the National Minimum Wage Act 2000 and 2015 and the other employment rights is less likely to arise. If however the employee is undertaking any “work” then the issue becomes more difficult. If they are performing any substantial sort of work then the reality on it is they will be an employee.

What should employers do?

If a business wishes to engage an intern on an unpaid basis in Ireland then it would be our advice that the internship is very short. It must be mainly educational. The benefit should flow to the intern not to the business. Effectively the question which a business has to say is “Are we prepared to have somebody here who we are able to train but expect them to do no work for us?” If the answer to that question is “yes” then it is more likely to be an internship. If the answer is “no” then it is more likely to be an employment.

How should businesses approach matters?

1. While there is no legal obligation to put in place an Internship Agreement it would be our advice that it is always useful to clearly set out exactly what the duties and obligation of the business and the intern is. The agreement should specify what the intern would do, how long the internship will last, the payment, if any, that is going to be paid, the expenses that will be paid. This agreement should be signed by both parties. The document should state that the intern is not an employee of the business.



2. The agreement should clearly indicate that the basis of the internship is training. The employee will not be required to undertake any work other than as part of the training. Once they have mastered any particular aspect they would be moved to a different aspect of work experience. It is also important however for any business to ensure that the intern gets induction training to advise them on relevant policies and procedures of the business. Businesses must be aware that the obligation under Health and Safety Legislation does apply to interns. The intern should be aware of the normal policies and procedures such as appropriate behaviour in the workplace as inappropriate action by an intern could result in a claim for sexual harassment if something inappropriate was said or done towards another employee as just one example. Employers should also ensure that their insurance policy covers them for having an intern.

3. Confidential information.

There will be always issue of confidential information. Where interns are taken into a professional business it is important that interns have the issue of confidentiality explained to them and that an appropriate confidentiality agreement is entered into.

4. Intellectual property.

It is advisable that the intern should sign an appropriate intellectual property agreement particularly in professional firms. This is to protect the business against any intellectual property created by the intern during his or her internship. There is a difficulty with this however. If an intern is creating intellectual property, during their internship, this is more akin to be an employee than an intern. It is more akin to them working rather than simply shadowing somebody. Saying this it is still important that an appropriate intellectual property agreement would be put in place particularly in professional firms.



Conclusion

Businesses must remember that simply calling a person an intern is not sufficient. A Court or an Industrial Tribunal such as the Workplace Relations Commission will look behind the title. They will look to see what the intern did. If you have an individual coming in every day over an extended period of time and working like any other worker or doing work of value for the business then it is more likely that they are going to be held to be an employee.

There are genuine internships. However internships have been misused in Ireland in the past. If taking on an intern a business might ask themselves “Are we in a position to give training to the individual which is real training and will they be primarily shadowing somebody else during the day and not undertaking work for the business”? They must ask themselves if the work that is undertaken is simply ancillary and subsidiary to the training and shadowing. If the answer to these is “yes” then it is more likely they are in internship. If the individual intern is spending substantially more time undertaking “activities” as opposed to training and shadowing then they are more likely to be an employee.

The length of the internship is also going to be relevant. Very short periods of time are more likely to be accepted to be an internship. Extended periods of time are less likely to be treated as an internship.

Where businesses get it wrong it can be expensive for the business. Before taking on an intern it is important that employers get appropriate professional, legal advice from a specialist employment lawyer. Failure to do so could result in an expensive employment law claim against the business.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**