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Are Your Summer Interns Covered By Federal Anti-Discrimination Laws?

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Several months ago the Equal Employment Opportunity Commission (EEOC) issued an informal discussion letter addressing whether interns (paid and unpaid) are covered by the anti-discrimination laws enforced by the agency (e.g. Title VII, GINA). With the summer months upon us, we thought it would be helpful to revisit the issue.

The Analysis for Paid and Unpaid Interns Will Differ

For unpaid interns, coverage likely will turn on whether the intern receives “significant remuneration” for his or her services (e.g. workers’ compensation benefits or access to professional certifications). However, even in the absence of “significant remuneration,” an intern might still be considered an “employee” if his or her services would ordinarily lead to full-time employment with the company. Interestingly, if a college or university provides a significant benefit for an unpaid intern who works for an outside employer, the intern may qualify as an “employee” of that employer.

With respect to paid interns, coverage will turn on whether the employer controls the means and manner of the intern’s work performance. There are a number of factors that come into play here, including: (1) whether the work is performed on the employer’s premises; (2) the employer’s authority to assign projects and set working hours; and (3) the employer’s authority to fire the intern.

What is the Takeaway?

Employers need to be cognizant of the fact that the use of interns could pose a risk of liability under the federal anti-discrimination laws enforced by the

Commission. Consequently, businesses need to consider this risk when deciding how to craft EEO policies, and also in policies and agreements related to summer interns. Employers should also be mindful that the circumstances where it is permissible to have [unpaid interns under the wage/hour laws](#) are limited.