

Nothing free and easy about internships

Interns are there to learn and observe, and employers will fall foul of the law if they expect them to work for free, writes Gareth Naughton

The intern is an increasingly prevalent feature of the Irish workplace with skilled, but work-starved individuals often volunteering their services to cash-strapped businesses in the hope of getting their foot in the door or gaining valuable experience.

These often ad hoc arrangements do, however, carry with them significant risk. The employer who uses their intern improperly risks facing claims under the broad range of employment laws designed to protect workers in Ireland.

The term 'intern' has no legal significance in Ireland, and anyone who is providing service of value to an employer has the right to be treated as an employee, according to Patrick Walshe, partner and head of the employment law department of Philip Lee Solicitors.

"Generally speaking, the law recognises two categories – the employed and non-employed. A trend that has developed in recent years – very much so in the UK, but to a lesser extent here – is employers believing that, if they call someone an intern and treat them effectively, the same as they would treat an employee, they somehow escape legal liability," he said.

"That really is not the case. An employee is someone who is providing service of value to an employer. If an intern – despite the title and despite the way that they are being treated as regards wages – is providing service of value, then that person can very easily argue that they have all of the regular employment rights, particularly those relating to the minimum wage."

Crucial distinction

This is not to be confused with genuine work experience or internship programmes, where, for the majority of their placement, the candidate is observing and learn-

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ing, rather than carrying out tasks. This is a crucial distinction, according to Janice Walshe, associate solicitor in the employment law department of ByrneWallace Solicitors.

"Within an internship you can have a situation where the primary purpose is educational and observational and the person might, as part of that, do a small amount of work which is ancillary to that learning," she said.

"If the bulk of the programme is, in fact, that they are not learning, they are just doing work, then in that situation there is a risk from an employer's perspective that the person could claim that they are entitled to salary and employee rights."

Although no major cases have been taken in Ireland as yet, interns in Britain have been successful when bringing claims under minimum wage and other employment legislation to that country's equivalent of the Rights Commissioners and Employment Appeals Tribunal.

Given that employment law in Ireland is broadly similar to the British system, the likelihood is that any claims made here would meet the same result.

Employer guidelines

The difficulties arising reached



Patrick Walshe, partner, Philip Lee Solicitors



Janice Walsh, associate solicitor, ByrneWallace Solicitors

the point where the Department of Business, Innovation and Skills were prompted to create guidelines for employers late last year, to ensure fair play for interns.

"Similar guidelines would be useful here," said Janice Walshe. "There may be a very pragmatic reason why we have yet to see any significant cases arising in Ireland, despite the surge in internships."

Anyone who feels exploited in their internship is likely to feel it is better to move on quietly rather than run the risk of letting the

they could in theory rely upon their employment rights."

This applies even in cases where there is a written agreement between the employer and intern.

"The courts have proven themselves to be quite capable of going beyond contracts if they feel that, for example, a piece of paper is being made use of to circumvent the law.

The courts and statutory employment tribunals are quite entitled to look beyond what is in a contract. Again, if I am a worker I have a right to at least a minimum wage," he said.

Minimum wage

Employers can protect themselves by paying the intern the minimum wage or making use of programmes like the government's JobBridge scheme which, it should be noted, operates within its own defined parameters and is governed by its own terms, so the issues raised here do not arise.

They should also not be overly worried about someone coming in on work experience or a genuine internship, and attempting to take a claim.

"I really wouldn't have a concern about genuine interns, someone who is there to get experience or see how an industry works," said Patrick Walshe.

"If they could assert employment law rights there would be chaos. It is something to be aware of and to be careful about, but it is not something to get overly concerned about as long as they are genuine interns."

Issues surrounding internships are of increasing concern to employee representatives. The Irish Congress of Trade Unions website has an extensive, and useful, page outlining the rights of interns.

Legal entitlements

This runs through everything from salary and working hour entitlements through to bullying and harassment.

ICTU legislation and legal affairs officer Esther Lynch said that high quality work experience can be of great benefit to people at the start of their career, but the system is open to abuse.

"Too many employers are taking advantage of the degree of competition for jobs and using unpaid internship as a way to get work done for free," she said.

"I have even heard that employers are seeking payment or a 'deposit' from the prospective intern. What is of concern is that some organisations are openly advertising unpaid internships that are clearly jobs.

"These employers are exploiting

the hopes of unemployed young people and may be in breach of national minimum wage legislation when they do not pay the interns for their work."

Probationary period

Not only is there a danger that unpaid internships will replace paid jobs, but also that this will become a normal way to recruit workers, replacing the usual six-month probationary period, she said.

"It's not just young unemployed graduates, older unemployed workers are also faced with increasingly fierce competition in the labour market and they, too, feel they must prove their commitment to a prospective employer by working unpaid as so-called 'interns'," she said.

Clear rules and proper vetting is needed to distinguish good employers from bad and to ensure that internships are beneficial to the participants as well as companies.

"Many interns are not aware of their rights and others feel that they cannot stand up for their rights, fearing that they will be branded as a troublemaker," she said.

"Given the sudden and extensive growth in internships and offers of unpaid 'work experience', and the risk that employers will not pay workers for their work, it makes sense to set out in clear terms the rights of 'interns' and those on work experience programmes."

Clear parameters

Where an internship is properly run and the focus is primarily on observation and education, none of the above will apply.

"You can have a valid internship programme that is beneficial to everybody," said Janice Walshe, "and through it, you may identify someone that you want to take on as an employee in the future. Certainly law firms have internship programmes through the summer, and then after that the interns come back as trainee solicitors."

"That can be a very beneficial process for everybody, because the interns can see whether they like the type of work they might be doing and the employer can see if the person is an appropriate fit for the organisation."

As such, employers should not turn their backs on the notion of internships, she said, but they do need to ensure that care is taken to make sure that whatever programme is in place is done properly and that the parameters are clearly set out in advance.

"That there is a proper programme for the intern to follow so that the bulk of what they are doing is observational and a learning process, as opposed to just doing unpaid work," she said.

People Problems

Relationship Breakdown

Gym needed to exercise better management



Gerard Flynn

Not every gym and health club enjoys the fittest employment practices, up-to-speed employee engagement or cutting-edge management practices. This was certainly the case in Duneske Leisure Complex in Cahir, Co Tipperary.

The complex was the brainchild of three voluntary groups in the town, which joined forces to provide sports, leisure, cultural and childcare facilities on one site.

The centre opened at the end of 2005 with a gym, aerobics room, two floodlit all-weather tennis courts and football pitches.

While it may have been a great asset to the community of south Tipperary, all was not rosy among the centre's managers, supervisors and employees.

The complex is run as a not-for-profit business with

charitable status, and depends largely on social employment grants and schemes – what used to be called Fás schemes. The complex employs 45 staff, of whom 26 are on these Fás schemes, which effectively pay their wages.

Sinead Phelan worked at the Duneske Leisure Centre as a receptionist and assistant. She enjoyed a good working relationship with the reception supervisor, Maeve O'Neill, and the gym supervisor, but communication difficulties arose in late 2010.

Working relations became difficult early in 2011 and, in March, she highlighted some of these concerns to the centre's manager, Tim Shanahan.

He called a meeting of the staff and left to allow them to consider any complaints they might have. When he returned, he was presented with seven issues centred on management communication and supervision.

The staff concerns included ideas being brought to staff, and no help being given to implement them – for example, the response to the idea of a Sports Day was met with "that's a great idea, run with it", but no help was forwarded. The full organisation was left to no one individual, and there was no acknowledgement for that added mile.

Game playing was also brought up, whereby it was alleged that documents were not printed and rubbish was hidden.

Also, staff who were on sick leave were expected to organise their own cover.

Issues with the centre's communication book were highlighted, such as notes being left with big question marks. Staff reported feeling that they couldn't do anything right, along the lines of "if you follow a note, you are wrong, but if you don't, you are also wrong".

On the subject of atmo-

“Not every gym and health club enjoys the fittest employment practices”

sphere, all of the staff pointed to the simple courtesy of saying "hello", saying that failing to do so set tone for the day, and also had an impact on customers.

Mis-use of the roster was also brought up. Staff maintained it should be for work hours only. Notes should not be put on the roster, they stated, also pointing out that changes made to rosters at weekends had not been communicated to staff.

Staff said they were unable to take their breaks at weekends. "We are being docked [for them], but they are not actually being taken," they said.

Within days, Shanahan felt that these concerns had all been addressed and he advised the staff to start afresh.

Two months later, in May, he felt a need to call another general staff meeting and, this time, included the two supervisors.

Shanahan criticised them for not having "moved on" and told them that the poor atmosphere was affecting the leisure complex business badly.

At the end of the staff meeting, the manager cautioned them: "So, from here, all I can say is that things have to improve. We can only ensure the success of this business by focusing on the future,

and we can only do so with a fully committed workforce that works as a team. So, either work together, or do the right thing and look for an alternative workplace. It really is as simple as that."

Phelan took him at his word and resigned immediately that day and declined a later offer of mediation.

She took a claim for constructive dismissal on the basis that she said her position was intolerable.

The manager told a recent Employment Appeals Tribunal hearing in Thurles that Phelan "was a fine receptionist and I would employ her again unequivocally".

Referring to the management and communications concerns raised by staff back in March, Shanahan added that "those issues were handled".

When you consider also that Phelan had no signed employment contract, and had not been given any policy or procedures on dealing with bullying at work, it is not surprising that the charitable leisure complex was ordered to pay her €4,576 in compensation.

Gerard Flynn is an employment specialist with Align Management Solutions in Dublin. Email gfflynn@alignmanagement.net

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■ Aine Ni Chaoidealbháin has been made general manager of UTV Ireland. Prior to this, she was head of production at Setanta Sports for seven years. She also spent 12 months as general manager at Sky News Ireland.



■ Sierra has appointed Ann-Marie O'Donnell as customer strategy director. O'Donnell joins from NICE Systems where she was vice president of professional services for three years. Before that, she was vice president of operations at Performix Technologies.



■ David Maughan has been appointed partner and head of Aviation and Asset Finance at William Fry. He joins from Maples and Calder where he was a partner for more than six years. Before that, he was an associate solicitor at A&L Goodbody for six years.



■ David McMunn has been appointed head of legal and compliance at UTV Ireland. He is joining from TV3 where he was director of government, regulatory and legal affairs for 11 years. He was also formerly legal counsel with Worldcom UK in London for four years.



■ UTV Ireland has appointed Paula McCarthy as head of sponsorship and promotions. McCarthy is joining from TV3 where she was head of branded content for two years. Before that, she was sponsorship and promotions manager with TV3 for three years.



■ Suzanne Dunne has been promoted to the role of area recruitment manager for the south east with the Matrix Recruitment Group. She had previously been a recruitment manager with Matrix for seven years.

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