

# Insurance Buyers' News



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Employment Practices

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## Intern-al Affairs

With the jobless rate for people ages 20 to 24 still higher than 10 percent, many college students might be willing to trade their time for an unpaid learning experience. But there is a legal difference between an employee and an intern. Knowing the difference can help you avoid breaking the law.

**T**he Fair Labor Standards Act (FLSA) governs working conditions and wages for employees in the private sector and in federal, state, and local governments. Workers covered by the FLSA are entitled to a federal minimum wage of not less than \$7.25 per hour; many states and cities require higher minimum wages.

Last year, the large employers surveyed by the National Association of Colleges and Employers reported they paid their bachelor's-degree level interns an average of \$14.05 to \$17.94 per hour. They paid interns at the master's degree level an average of



## This Just In

**B**etween 2012 and 2014, insured property values in the U.S. increased 9 percent, according to a recent study by Karen Clark & Co. The report estimates total building values at \$40 trillion. States with the highest property value, in order, are California, New York and Texas. Values of property along the coasts and in earthquake-prone areas continue to grow faster than for the country in general. Six coastal counties in California, New York and Texas account for more than \$1 trillion of insured property value each. When combined, insured property values there equal more than 12 percent of the U.S. total. Industrial and agricultural properties account for 14 percent of total values. Insured

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\$22.21 to \$23.06. Yet an estimated 47 percent of interns received no pay, including at some for-profit companies.

### Employee = Paid. Intern = Unpaid (maybe)

If the intern is not an employee, though, the FLSA would not apply...nor would minimum wage requirements. So what separates an intern from an employee?

A legitimate internship is primarily a learning experience for the intern, not an opportunity for employers to gain cheap or temporary labor. The U.S. Department of Labor lists the circumstances under which an intern can work at a for-profit organization's internship or training program for no pay:

- 1 The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment;
- 2 The internship experience is for the benefit of the intern;
- 3 The intern does not displace regular employees, but works under close supervision of existing staff;
- 4 The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
- 5 The intern is not necessarily entitled to a job at the conclusion of the internship, and
- 6 The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If the internship meets all of the criteria above, an employment relationship does not

exist under the FLSA, and the Act's minimum wage and overtime provisions do not apply to the intern. Some employers (or schools) pay interns a stipend for living expenses or lodging during their internship. That does not count as wages and does not create an employment relationship.

### What Other Laws Apply to Interns?

Federal job discrimination laws that apply to employees and job applicants would not apply to individuals whose positions meet the Department of Labor's criteria for unpaid internships. These people are not considered employees, so federal employment laws would not apply. However, employers should know that some states, including Oregon and New York, have laws that specifically protect interns from job-related harassment and discrimination.

If your paid interns qualify as regular employees, federal and state non-discrimination laws in hiring and supervision will apply. As a matter of good business sense, though, employers should avoid discriminatory actions against unpaid interns as well as employees.

What about injuries? Since interns are often young and relatively inexperienced, they have a higher potential for injury. To avoid problems, make sure the education they receive includes basic safety training.

Some states specifically exclude interns from coverage under their workers' compensation statutes. In states that are silent on the issue, workers' compensation boards and courts will often decide an intern's status based on his/her contributions to the organization. Whether you call workers employees or interns, their duties and what they gain from the position are what matters. If your intern qualifies as an employee,

### *This Just In*

personal and professional service properties account for another 13 percent. The insured value of retail and wholesale properties equals 11 percent of total values.

What does this mean for businesses? "The cost to replace residential and commercial properties destroyed by natural disasters has continued to rise faster than the general economy," the report said. When insurers have risks concentrated in one geographical area, a major insured disaster can put them at risk of insolvency.

We can help you ensure your coverage is placed with a financially sound insurer with a diversified risk portfolio. For more information, please call us.



workers' compensation might apply. Coverage for those who meet the FLSA criteria for interns remains a gray area.

Any employment relationship can create the potential for liability and loss. For information on minimizing your organization's exposure to risk, please contact us. ■

# Will Medical Marijuana Send Your Employment Policies up in Smoke?

Twenty-two states and the District of Columbia now allow the medical use of marijuana. Colorado, Oregon and Washington have also legalized its recreational use and possession. How will this affect your employment policies?

**Americans with Disabilities Act:** In an informal opinion, the Equal Employment Opportunity Commission said "...the ADA does not protect individuals who are currently engaging in the illegal use of drugs..." Federal law still classifies marijuana as a Schedule I illegal drug. Even in states that allow marijuana use, federal employment laws, such as the Americans with Disabilities Act, would not apply to protect marijuana users.

Refusing to hire or otherwise discriminating against medical marijuana users remains a gray area unless state law specifically prohibits it. Connecticut and Arizona protect medical marijuana users from employment discrimination. However, the EEOC considers past drug addiction a protected disability, so employers should avoid questions about past addiction to illegal drugs or participation in a rehabilitation program.

**Zero-tolerance policies:** Generally, employers can prohibit the medical use of marijuana by on-duty employees. If you decide to implement a drug-testing program, remember that laws designed to protect workers' civil rights could affect your workplace drug policies. These laws include the Civil Rights Act of 1964 and the Americans with Disabilities Act. These statutes limit how far an employer can go in investigat-



ing and disciplining employee drug use.

Many states and U.S. territories have their own laws and regulations dictating when and how workplace drug testing should be carried out. Some also require state and local contractors to develop drug-free workplace policies similar to those under the federal Drug-Free Workplace Act. No one set of rules and regulations applies throughout the country. Some states, such as Louisiana, allow drug testing

in virtually every type of business and in both the public and private sectors. Others, such as Maine, restrict who can be tested, how they can be tested, and what kinds of rehabilitation and disciplinary options can result from a positive test.

Employers can take several simple steps to avoid legal problems with their drug testing policy:

- ✓ Consult an employment lawyer whenever you introduce a new drug-free workplace policy or change an existing policy.
  - ✓ Make sure your drug-free workplace policy clearly stipulates penalties for violations. If your policy includes drug testing, spell out exactly who will be tested, when they will be tested, and what will happen to employees who test positive.
  - ✓ Make sure every employee receives and signs a written copy of your drug-free workplace policy. Verbal agreements and unsigned agreements have little legal standing.
  - ✓ Make sure that you, and all your supervisors, receive proper training in how to detect and respond to workplace drug and alcohol abuse.
  - ✓ Maintain detailed and objective records documenting the performance problems of all your employees. Such records often provide a basis for referring workers to employee assistance programs.
  - ✓ Never take disciplinary action against a worker or accuse a worker of a policy violation simply because that employee is acting impaired. Instead, try to clarify the reasons for the employee's impairment. If drug testing is a part of your workplace policy, obtain a positive test result before taking any action.
  - ✓ Never accuse or confront an employee in front of coworkers. Instead, try to stage all discussions someplace private, with another manager present to serve as a witness.
  - ✓ Never single out an individual employee or particular group of employees for special treatment — whether it is rehabilitation or punishment. Inconsistencies in policy enforcement may lead to discrimination charges.
  - ✓ Try to get to know your employees as much as possible. This may help you more quickly identify workers who are in trouble or developing substance abuse problems.
  - ✓ Most important, try to involve workers at all levels of your organization in developing and implementing your drug-free workplace policy. This will reduce misunderstandings about the reasons for a drug-free workplace program and help ensure that policies and procedures are fair to everyone.
- The U.S. Department of Labor's (DOL) Working Partners for an Alcohol and Drug-Free Workplace Web site provides employers with free resources and tools to help establish and maintain drug-free workplace policies. And we recommend having a local employment attorney review your policy before implementation. For more suggestions on improving workplace safety, please contact us. ■

## Fire Prevention

When it comes to fires, residential fires come to mind first. But commercial properties are also vulnerable. The National Fire Protection Agency reports an estimated 1,650 fires occur every year in stores and mercantile properties; 3,040 per year in office buildings; and 15,400 in high rises. The following pointers can help prevent your business from becoming a statistic.

**F**ires need tinder, or easily combustible materials, and oxygen to start. If a spark, electrical short, excess heat or other ignition source contacts tinder where oxygen is present, a fire will likely start. Whether it spreads depends on the amount of oxygen and fuel available. Preventing fires therefore requires ensuring that combustible materials do not come into contact with ignition sources. And to contain or slow the spread of fires, you need to minimize their contact with additional fuel sources and oxygen.

A fire can start inside or outside your structures. To begin a fire prevention program, check the perimeter of the building for the following:

- ❑ Flammable debris, such as paper, rags, wood, trash. If you must store these items near your structures, store them in solid containers, the more airtight the better.
- ❑ Flammable liquids. Make sure any flammable liquids stored outside your structures, including propane and other fuel tanks, are well-labeled and securely closed. In certain areas, you might need to store these in a fenced, locked area.
- ❑ Landscaping. Well-maintained landscaping can help prevent the spread of fires. Mature shrubbery is somewhat fire-resistant. Weeds, on the other hand, grow and burn quickly. If your property has overgrown areas, consider planting (and maintaining) these areas, or clearing them and replacing planted areas with hardscaping.

Fires can start inside a building as well. Potential fire starters you can find in your building include:

- ❑ “Ordinary” combustibles, such as paper, wood, cloth, rubber, building materials. Storing these materials in appropriate containers can minimize their potential to become fuel in a fire. Packing them tightly so air cannot circulate will also help retard the spread of flames.
- ❑ Flammable liquids, such as fuel oil, gasoline, cooking oils, solvents. Again, storing these liquids in properly sealed containers can prevent problems.
- ❑ Electrical equipment, such as wiring, fuse boxes, motors. Minimize your fire risk by having only qualified contractors install or repair wiring. Keep motorized equipment well-maintained and clear of any combustible debris. Use only extension cords appropriately rated for the appliance or fixture attached.

To contain a fire once it begins requires the proper equipment. Every business, no matter how small, needs at least one fire extinguisher



per floor. One fire extinguisher will not work on all types of fires. For best results, match the type of extinguisher to the type of combustibles in the area:

- ❑ Class “A” — Ordinary combustibles (wood, paper, cloth, rubber, etc.)
- ❑ Class “B” — Flammable liquids (fuel oil, gasoline, cooking grease, solvents, etc.)
- ❑ Class “C” — Energized electrical equipment (wiring, fuse box, electric motors, etc.)
- ❑ Class “D” — Combustible metals (magnesium, sodium, zirconium, etc.)

Appoint someone to check smoke detectors and fire extinguishers regularly, at least twice a year. Sprinkler systems also need periodic professional inspections; check with your installer for information.

Learn how to use a fire extinguisher properly. Pull the pin, aim at the base of the fire, squeeze the handle and spray from side to side at the base of the fire. For safety, the operator should stand between the fire and the exit to allow a quick escape if the fire does not go out.

The standard business property policy or business owners policy (BOP) includes coverage for fire. Check your policy's limits to ensure you have enough coverage to rebuild after a total loss—although your policy might have been adequate when written, the replacement cost of your building and/or its contents have likely increased if you've had the policy more than a couple of years.

You will also want to ensure you have coverage for debris removal and lost income if a fire or other insured loss causes a business closure or slowdown. For more information on managing the risk of loss due to fire or other catastrophe, please call us. ■

## Insurance for Rental Equipment

If a piece of equipment that you rent is damaged, who is responsible? Your firm or the rental company? If you have done things right, the correct answer is “neither”—instead, the insurer covering the rental contract will have that responsibility.

Most companies that rent or lease equipment require the renter to provide proof of insurance before releasing equipment. This protects them from financial loss if their equipment is damaged or destroyed in a major catastrophe, such as a fire, that prevents you from being able to pay them back.

Industry experts say the best way to deal with this demand is with specialized insurance products designed to cover the rental market. Coverage will include both property insurance and liability insurance. Property coverage protects the equipment from damage and liability insurance protects the renter from legal claims based on the use of the equipment. For example, if your rental printer malfunctioned, caught fire and caused other tenants in your business to have smoke dam-

age, the policy would provide coverage. It also streamlines the process of providing the certificate of property insurance that rental companies demand.

Specialized rental insurance often costs less than similar coverage under your business owners policy or other standard commercial property policies. Renting allows companies to get the exact machine they need when they need it, rather than spending much more to buy a device they might rarely use. In the same way, rental property insurance gives you what you need, when you need it—you can match the term of your coverage to the term of the rental, rather than your property policy term, allowing you to save money. Rental property coverage is also purpose-built to cover the liability exposures associated with operating rented equipment. Typically it also offers lower or zero deductibles.

If you have rental or leased equipment, be sure it's properly insured. For more information, please call us. ■

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