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TO: Vice Presidents, Academic Deans, Athletic Directors

FROM: Jeff Farrar, Assistant University Counsel

DATE: February 6, 2013

RE: Unpaid Internships

Our office has received several questions about the laws surrounding interns/externs (both MTSU students performing internships off campus and interns working for MTSU) and whether they must be paid at a certain rate. The memo below provides some general guidance on this issue. In addition, we have linked to some additional resources for more detailed information.

For the most part, questions regarding compensation for interns are addressed by the Fair Labor Standards Act (“FLSA”), the federal law that addresses subjects such as minimum wage, overtime, and child labor. And, as a general matter, the FLSA requires that employees be paid at least minimum wage. As discussed below, however, there are some exceptions that can apply to interns and allow such positions to be unpaid, within certain parameters.

The parameters under which an unpaid internship may be allowed vary depending on the type of employer – government entities, non-profits, and private, for-profit entities. As a result, the considerations for each of these entities are discussed in turn below.

Interns working for public employers (including interns working for MTSU):

A person who volunteers for a public agency, such as MTSU, or another government agency or entity, is not considered an “employee” under the FLSA. 29 U.S.C. § 203(e)(4)(A). Government agencies may use these unpaid interns/volunteers as long as the individual is not paid any compensation other than expenses, reasonable benefits, or a nominal fee.

In addition, the services provided by the intern cannot be the same type of services that the intern is paid to perform for the public entity. In other words, a public entity cannot pay its employed nurses a wage for 40 hours a week and also allow them to perform “voluntary” nursing services for another 10 hours per week.

Interns working for non-profit employers:

Although not expressly addressed in the FLSA, the U.S. Dept. of Labor (“DOL”) takes the position that “[i]ndividuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar non-profit corporations which receive their services.” http://www.osha.gov/pls/epub/wageindex.download?p_file=F11973/WH1297.pdf (pages 6-7). As a result, charitable agencies may also use unpaid interns without running afoul of the FLSA.

Interns working for private, for-profit employers:

In the context of private, for-profit employers, the DOL focuses on six criteria to determine whether a worker is covered by the FLSA, and thus entitled to minimum wage and overtime. As a general matter, the DOL requires that all six criteria be present before it will conclude that an unpaid internship is permissible. The criteria are as follows:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which 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.

Additional information on these factors can be obtained from the DOL’s Fact Sheet on this issue at <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>. If the DOL is processing the complaint, it will require that all six elements be met before it will conclude that the unpaid internship is permissible.¹

¹ It is worth noting, however, that the U.S. Court of Appeals for the Sixth Circuit, which includes Tennessee, does not completely agree with the six-part test put forth by the Department of Labor. See [*Solis v. Laurelbrook Sanitarium & School*, 642 F.3d 518 \(6th Cir. 2011\)](#). In that case, the Court declined to rigidly focus on the DOL’s six criteria and instead considered whether the worker or the employer received the primary benefit of the internship.

Given the ability of the DOL to investigate allegations of inappropriate unpaid internships, it may be wise for an employer to strive to meet all six factors of the DOL’s test. Because the DOL includes the “primary benefit” consideration in its analysis (#2, above), satisfying the DOL’s standard will also likely satisfy the primary benefit test applied by the Sixth Circuit.

Forms:

All interns (MTSU students working off-campus and interns working with MTSU) should execute a [Learning Agreement Form](#) acknowledging the parameters of the internship.

In addition, unpaid interns working for MTSU should complete a volunteer [Statement of Understanding](#).