

# Empowered

A monthly online publication published by Thompson Management Consulting, LLC for small business change makers – March 2014

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- Securing Your Company's Information
- Know When to Outsource
- Proper Insurance for Your Business
- IRS Small Business Tax Filing

## Unpaid Internships: No Panacea

*Todd Stanton, Attorney*



**Especially in these tough economic times, your company is looking to cut labor costs however it can. And if you can, at the same time do, a favor for a deserving young person looking to gain industry experience, all the better. An unpaid intern for your organization, then, would seem like a great idea, right? You get free help and the intern gets a resume enhancer. Win-win?**

Not so fast. Your well-intentioned efforts to provide an enterprising student with invaluable real-world experience (with the additional benefit of getting some high-quality, low-cost help for several months) may end up costing you more in dollars and headaches than you'd bargained.

### **Interns are people, too (and are likely employees, as well)**

The Fair Labor Standards Act ("FLSA") and similar state-specific wage and hour laws govern compensation payment practices for employees. The FLSA defines the term "employee" broadly and includes any person who is "suffer[ed] or permit[ted] to work." It requires employers to (subject to several narrow exemptions) pay employees at least minimum wage for each hour worked and overtime (time and a half the employee's regular rate) for hours worked in excess of 40 in a workweek. State laws may impose other obligations.

According to its official policy, the U.S. Department of Labor ("DOL," the agency responsible for enforcing the FLSA) designates most "interns" as regular employees and takes the position that, as employees, interns are entitled to compensation for the work they perform. This includes at least minimum wage and overtime. It is not enough that an intern has agreed to work for free, that the company has titled the position an "unpaid internship," or that the intern is receiving school credit for their work – whether an intern is an employee (and therefore entitled to compensation) is a matter of law, not agreement or contract or opinion.

### **Because the Supreme Court said so, that's why**

In light of the DOL's position, companies should assume that an intern is an employee and entitled to compensation for their work. The law, though, recognizes the laudable public policy of encouraging companies to offer on-the-job training, and the United States Supreme Court has carved out a narrow exception that may, in limited circumstances, apply to and allow for unpaid internships.

According to the Supreme Court, the term “suffer or permit to work” cannot be interpreted so as to make a person whose work serves only his own interest an employee of someone who simply provides aid or instruction. This exclusion may apply to interns who receive training for their own benefit (educational, experiential, etc.) if the internship program satisfies six defined criteria when considered against all of the facts and circumstances of the program.

The six criteria are:

**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** – The more an internship is structured around classroom instruction and/or an academic experience, the more likely the internship will be viewed as a part of the individual’s education (and therefore for the intern’s benefit). The more the intern is engaged in the substantive operations of the company or performs productive work (such as filing, clerical work, or assisting customers), the more the intern starts to look like an employee.

**The internship experience is for the benefit of the intern** – A position in which the intern learns skills that can be used in a variety of employment settings, not just skills applicable one employer’s operations, is more appropriately considered an internship. Likewise, if the intern receives academic credit for the work performed, the easier the argument that the experience is for the intern’s benefit, not the company’s.

**The intern does not displace regular employees, but works under the close supervision of existing staff** – The law will not smile upon using unpaid interns as a substitute for regular workers who would otherwise be paid. If an employer would have hired additional workers or required existing workers to work more hours if the intern had not performed the work, the intern will likely be considered an employee and be entitled to compensation. If, on the other hand, the intern is merely shadowing existing employees and learning the business under regular employees’ tutelage, the more likely the position will be considered a bona fide educational experience and qualify for an internship exemption from compensation obligations.

**The employer that provides the training derives no immediate advantage from the intern’s activities (and on occasion its operations may actually be impeded)** – The more the intern’s services benefit the company’s operations through, for instance, increased revenue, enhanced productivity, or improved efficiency, the more likely it is the intern should be compensated.

If, however, the company spends time, money, and effort on the intern that is actually diverted away from the company’s bottom line, the arrangement can be more legitimately categorized as an internship. This criterion is consistent with the notion that the internship is a training opportunity for the intern, not a low-cost staffing option for the company.

**The intern is not necessarily entitled to a job at the conclusion of the internship** – A genuine unpaid internship must be more than an extended interview or trial period to determine a worker’s suitability for future employment. If there is an express or implied expectation that the intern will ultimately be hired on a permanent basis, the intern would likely be considered an employee. True unpaid internships should be of a fixed duration, established prior to the outset of the internship, and an employer should be prepared to demonstrate that its internship program is not merely a self-serving employee Pipeline.

**The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship** – Although the intern’s agreement to forego monetary compensation is not, in and of itself, sufficient to exempt the intern from the FLSA’s compensation requirements, it is a prerequisite to a lawful unpaid internship program. Employers are advised to have clear, unambiguous, written internship program guidelines that expressly state that the intern will not receive wages (or a guarantee of future employment) and to have the intern acknowledge their receipt of and agreement to the policy. The program guidelines should also outline for the intern the learning objectives, describe the types of training available, and set forth a conspicuous disclaimer that the intern is not an employee.

A properly classified “unpaid internship” must meet all six of these elements. Only when all six are satisfied can an employer lawfully avoid the FLSA’s minimum wage and overtime violations. Otherwise, the intern is entitled to monetary remuneration for their work, as well as the protection afforded by other federal, state, and local employment laws.

### A simple cost-benefit analysis makes the answer clear

An internship program, therefore, is not a quick, easy, and/or cheap alternative to regular employees. Unless the honest purpose of the internship is to offer educational or vocational training opportunities to folks looking to dip a toe into the workforce, shortsighted employers who have tried to take advantage of a misclassified intern may find themselves faced with tax penalties, wage and hour liability, and other legal jeopardy that far exceed the perceived cost savings from a temporary unpaid hand around the business.

When in doubt, therefore, about whether your company's internship program would satisfy all six criteria and pass DOL or Internal Revenue Service scrutiny, a safer course would be to pay the interns at least the applicable minimum wage (which may be different depending on the worker's location) and any overtime for which they become eligible. If the intern is not worth even this marginal expense, perhaps the overall efficacy of the internship program should be evaluated.

We all know that there is no such thing as a free lunch. There's also no such thing as a free intern.

### Author: Todd Stanton

*Todd is the founder of Stanton Law, LLC in Atlanta, GA, where he is focused on helping companies avert employment-related issues without sacrificing managerial efficiency. "I take great pride in being able to provide counsel to employers and help them achieve practical solutions to what are often very personal, and potentially expensive, problems. I feel very lucky to be where I am right now, doing work I believe in. I really have a pretty good gig." Visit Stanton Law at [www.stantonlawllc.com](http://www.stantonlawllc.com).*

### Run With the Bulls – Be a Change Maker in 2014



## 3 Reasons Why You Should Ask for HELP From Experts!

Dar'Shun N. Kendrick, Attorney



No one should be ashamed of asking help from experts, those that do what they do for a living...and do it well! That's what they are there for! But many times as entrepreneurs, we either think we know EVERYTHING about a business or we feel ashamed that we have to ask for help. Don't let pride and arrogance get in the way of asking for the help you need to grow your business. The experts are pulling for you—but you have to be willing to ask for help at the appropriate time.

That's why Kendrick Law Practice is rolling out a series of informative [blog talk radio](#) shows with various business and legal experts starting Feb. 13th and every 2nd Thursday this year from 6-7:30 pm. You can download the flyer and see the full schedule at [www.kendricklaw.net](http://www.kendricklaw.net).

### Here are 3 reasons why you shouldn't be ashamed to ask for help from the experts:

1. **They want to help.** Most experts are experts because they LOVE what they do. Therefore, they love telling and sharing with other people...you...what they do. Don't be afraid to reach out and let them educate you to their heart's content.
2. **Don't let pride keep you from your best.** You've heard the cliché that "pride comes before the fall". Well, it's true. Letting your pride in your abilities and business stop you from asking for help from experts is not only counterproductive (because you need the help) but shows a lack in leadership from your point. Leaders are visionaries. It's hard to have a clear vision if you are unsure about the path your business will take in the future.
3. **Chances are, your competition is asking.** Don't let you be the only one NOT asking for help and getting the right answers for your business. If your competition is asking and getting the needed help, they already have an unnecessary competitive advantage over you. It's not a sign of weakness to ask questions but a sign of strength. So use it! Before your competition gets that one piece of information that puts you out of business.

So...what are YOU waiting on to put every 2nd Thursday from 6-7:30 pm on YOUR calendar to tune in to hear great experts give you FREE advice about growing your business?! It costs you nothing. I hope to hear from some of you starting February 13th!

**Author: Dar'Shun N. Kendrick, Esq.**

*Dar'Shun is founder of Kendrick Law Firm and an accomplished Attorney at Law specializing in business litigation. She is a graduate of Oglethorpe University with a B.A. in Political Science and Communications, a J.D. from the University of Georgia, and an M.B.A from Kennesaw State University. She is a native of Atlanta, Georgia and the daughter of two successful business owners. Dar'Shun credits her passion for small business development from her parents, and is now focused on keeping businesses owners "in business and out of court". Expanding on her professional credits, Dar'Shun was elected to the Georgia House of Representatives in 2010 to represent constituents in East DeKalb and Rockdale counties in the Georgia General Assembly, where she is in her second term. You can reach the Kendrick Law Firm and learn more about Dar'Shun at [www.kendricklaw.net](http://www.kendricklaw.net), and also at (678) 739-8109.*

## Benefits of the SBA 8(a) Business Development Certification Program



**Austin E. Thompson, Jr., MBA, MPM**

Starting a business and transforming an idea from vision to its physical manifestation requires a great deal of planning, ambition, consistency, determination, and most important, financing. For some entrepreneurs, securing seed money to fund an upstart can be a daunting experience. Having family and friends who believe in your idea and business model are a blessing for some. However, when you don't have access to friends and family, from whom you can leverage assistance to fund your upstart, the complexity of financing your dream increases. Hence, disenchantment can be so overwhelming, that you cease to continue on the path to fulfilling your entrepreneurial dream for a safer option. Equally challenging is the lack of access to a fair playing field, where government contracts and other opportunities are inaccessible to entrepreneurs classified as underserved or disadvantaged. Members of socially and economically (socio-economic) underserved communities are among the highest of those who lack access to such sources, which would facilitate the opportunity of becoming a thriving business.

The Small Business Administration (SBA), established from the Small Business Act of 1953, has worked to ensure small business owners achieve their entrepreneurial goals over the past fifty years with programs supporting and fostering development, growth, and sustainable success. In providing support to small businesses and entrepreneurs in search of equitable access while competing for government contracts for their businesses, the SBA recognized that small socio-economic disadvantaged businesses require access to resources, which are traditionally accessible by larger businesses, and created the 8(a) Business Development Certification Program. What this program does is simple. It provides a pathway through certification for a firm to have access to sole-source government contracts worth up to \$5 million, and without this certification, a small socio-economically disadvantaged business would be kept out from fairly competing for government contracts. Sole-source contracts are those where you are the only potential contractor competing for the contract, hence, the name sole-source.

Small businesses, which are socio-economically disadvantaged in scope, and have been kept out of a fair process to compete for government contracts, may find the 8(a) program beneficial. Once qualified, you are entered into a sole-source process, and based on your service or product offering, contracts are identified for you. To learn more about the SBA 8(a) Business Development Certification Program, log on to <http://www.sba.gov/category/navigation-structure/contracting/contracting-support-small-businesses/8a-business-developme>, and be on your way to competing successfully under the SBA's guidance. Happy contracting!

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# New Business Profile



## RIVERDALE CENTRE FOR INNOVATION

### A BUSINESS /CHARTER SCHOOL INCUBATOR

#### [Riverdale Centre For Innovation](#)

In an effort to address some specific disparities in Riverdale and Clayton County, The Riverdale Downtown Development Authority (RDDA), in conjunction with the Clayton County Board of Education, will launch the Riverdale Centre For Innovation. This initiative is designed to foster entrepreneurship and enhance the learning environment for students in the surrounding communities. The overall goal is to develop a two pronged approach that includes business/charter school incubation.

#### **Business Incubation**

- (1) Provide a multi-tenant business incubator with associated programs and services designed to improve the viability and strength of small businesses and serve the economic development role of creating new jobs.
- (2) Accelerate the development of job training programs by identifying partners with structured curriculums that provide career path development.
- (3) Incorporate the resources of the local colleges, technical schools and job development agencies into the business development programming.

#### **Charter School Incubation**

- (1) **Train educational leaders to develop high-performing charter schools** that will serve as local and regional models of education reform.
- (2) Provide financial and professional resources to proven leaders that are willing to take on the greatest challenges within our education system.
- (3) The development of a comprehensive support framework designed to provide unprecedented training, incubation and early-launch support to experienced leaders looking to transform low-performing charter schools.

#### **Business/Charter School Incubators in Georgia**

The existing business incubators in Georgia help companies commercialize their ideas into marketable products and services. At the present, there are approximately 25 business incubators in Georgia. The Advanced Technology Development Center (ATDC), located at the Georgia Institute of Technology, is probably the most notable business incubator in the metro area. The facility has

helped launch a who's who of business success stories by growing ideas and business innovations into world-class laboratory facilities, using state-of-the-art equipment, and leveraging a network of the Technology Development Centers (TDCs).

At the present, there are no business incubators in the south metro area. The Riverdale Centre for Innovation will be located in a 65,000 s.f. classroom building formerly occupied by Riverdale Elementary School. The incubator will serve approximately 15 to 24 businesses, at any given time. Some businesses would be "residents", meaning they will be located in the facility, and others would participate as "affiliates" who do not reside in the facility.

The development of a charter school incubator in Riverdale and Clayton County will be a totally new initiative. The overall goal is to **close the education achievement gap** by supporting the creation of "**high-quality**" public charter schools in Riverdale and Clayton County. Ideally, by growing the capacity of excellent charter schools and bringing the very best charter models to the area, we intend to show all students, regardless of circumstances, they can achieve great results.

### **Riverdale Centre Business Incubator :**

The business incubator will be a "mixed use" incubator, meaning that it will serve a variety of types of businesses. The clients would include non-technology and technology businesses, as well as, product and service businesses. Non-technology businesses may include retail, consumer products, and healthcare services. Technology businesses may include film and media productions, software products or computer services, medical devices, water and soil testing, or digital design, to name a few. Client businesses would receive assistance with the successful start-up and growth of their businesses. One-on-one coaching and mentoring would be the primary form of assistance.

The incubator staff will provide coaching and create a network of resources to enhance the business expertise available and to connect the businesses with bankers, accountants, lawyers and others in the community that provide assistance and guidance. Periodically, the incubator would host educational seminars for clients. Leveraging organized programs, like the training provided by the Clayton State University Small Business Development Center (who would be an anchor tenant in the facility), and the Clayton County Chamber will be important components. The incubator will also develop a technology commercialization program to benefit technology businesses and faculty developing programs to benefit technology businesses and intellectual property.

To facilitate close ties with local universities, technical schools and other philanthropic organizations, the incubator will secure non-profit status and operate under the auspices of the Riverdale Centre For Innovation,(RCFI) which will be a 501(c)3 non-profit organization. In addition, the RCFI will create an Advisory Board, composed of members from the local universities and the business community, to provide oversight and expertise specific to the RCFI's mission and operations. All companies and entrepreneurs that wish to join the incubator must successfully complete an application and selection process.

### **Charter School Incubator**

There are a small but growing number of organizations across the country dedicated to creating better schools and attracting more talent to public education through a strategic process called "charter school incubation." These organizations are united in their belief that the development of great charter schools can be accelerated through the recruitment, selection, and development of talented school leaders. By developing a new generation of top charter school leaders and supporting them as they start schools, charter incubators are intentionally building the supply of new schools and increasing the number of high-quality school options in their communities and states

Based on our research, none of these organizations are currently operating in the Atlanta metropolitan area, as well as, the State of Georgia. In addition, Based on a study titled “**Shortchanged Charters**”, created in collaboration with the Georgia Charter Schools Association, Colorado League of Charter Schools and the National Alliance for Public Charter Schools, most of the charter schools in the state face several challenges as it relates to overall performance.

In an effort to launch a successful charter school incubator, the RCFI will allow one charter schools to operate on the campus. **Scholars Academy**, an existing charter school will occupy approximately 40,000 s.f., and accommodate 245 kids from K-5 grades. The school is five (5) years old and achieve mixed results according to the Georgia Association of Charter Schools.



Mike Syphoe, Executive Director of the Riverdale Centre for Innovation



Keynote Speaker, U.S. Congressman David Scott, (D-GA, 13<sup>th</sup> District)



Honorable Dr. Evelyn Wynn-Dixon, Mayor of Riverdale, GA

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# Business Marketplace

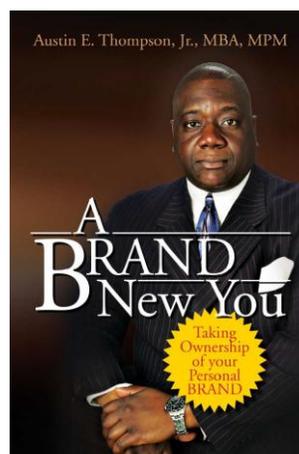
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