

## Interns and Volunteers: Lawsuits Raise Questions About “Free Labor”

Let's begin by stating the obvious: Volunteers are the absolute back-bone of our industry. At the Kentucky Derby Festival (“KDF”), we benefit from the hard work and unselfish dedication of over 4,000 of them every spring.

They work on committees, hold ropes at events, hand out race packets at our miniMarathon, and generally make our KDF world go round. There are also the interns who work in our office throughout the year. They come here with the stated mission of essentially working full time (and during Festival season, more than full time) for no pay. OK, we might feed them a slice of pizza every now and then. But their ultimate reward is the opportunity to cut their teeth in our industry by learning what we do and how we do it. Added to that is the benefit of earning college credit. The time, effort and passion demonstrated by both interns and volunteers is priceless.

But consider this: What if we had to put a price tag on their time? Would your Festival still be able to hold a parade or balloon festival or concert series or fireworks show?

I'm guessing the answer is no. At least it would be here at KDF.

It's an interesting question that is at the heart of lawsuits that have recently been filed by unpaid volunteers and interns. While it appears that not-for-profit organizations such as festivals and events are not included in the cases outlined below, the facts and applicable case law can be instructive and might provide a precursor of issues potentially looming on our horizon.

A lawsuit was recently filed against Major League Baseball (“MLB”) by a volunteer for failing to pay him at least minimum wage for the 17 hours he worked. MLB hosted its 2008 FanFest in New York City and recruited 2000 volunteers. Those volunteers were given a shirt, a cap and a cinch drawstring backpack,

free admission for the volunteer and one guest to FanFest, a water bottle and a baseball. In return, volunteers were asked to stamp wrists of customers and hand out FanFest bags. The lawsuit alleges that a for-profit company such as MLB gained an unfair competitive advantage by not paying volunteers, which runs afoul of Federal minimum wage laws<sup>1</sup>. The key term to pay attention to is “for-profit.” MLB is a multi-billion dollar company that enjoys making a profit in the tens of millions of dollars from FanFest. The lawsuit basically says that MLB used free labor to perform tasks that should have been performed by people making at least minimum wage.

Another interesting case was filed in 2010 by unpaid interns against Fox Searchlight Pictures. One of my co-workers, Jennifer Morgan, ran across an article on this case and thought, “Hey, maybe our legal guy should see this.” I'm very glad she passed it along, because it bookends well with the volunteer issue. In June 2013, a federal court ruled that Fox had violated minimum wage and overtime labor laws by not paying the interns for work they did while on set<sup>2</sup>. The intern's duties included taking lunch orders, answering phones, filing papers, and making photocopies. Again, we are dealing with a for-profit company in Fox Searchlight, but the fact that a federal court ruled in favor of the interns has caused intense debate on the subject, along with additional lawsuits against The New Yorker and W magazine parent company Conde' Nast Publications.

To be clear, unpaid internships are not unlawful. However, there are standards set by the Department of Labor that must

be met. These standards *DO* apply to our world of non-profit festivals and events:

- Though the internship might benefit the employer, the training given to the intern is similar to the training given in an educational environment;
- The internship clearly benefits the intern;
- Regular employees are not displaced from their jobs, and the intern works under staff supervision;
- The employer receives no immediate advantage from hiring the intern, and in fact, company activities might be impeded by the presence of the intern;
- The internship is not a guarantee or suggestion of employment after the internship is over;
- Both the employer and the intern understand and agree that no wages will be awarded to the intern for the internship.

So what can your organization do to guard against any potential legal issues with interns or volunteers? First, absolutely do not stop your pursuit of recruiting as many good volunteers as possible. As non-profit organizations, many of which support charitable causes, the use of volunteers is critical to the success of our events. There is nothing that can be interpreted from recent court filings or rulings which targets a non-profit festival, event or civic celebration. As long as your tax designation with the IRS is in proper order, your organization should be fine. Second, if your organization relies on interns to help out, especially during peak seasons, be sure to thoroughly review your internship program so that it meets the requirements listed above. The expectations of the intern and

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of your organization must be clear and preferably spelled out in writing. Probably the biggest red flag is making sure that interns and volunteers are not brought on to perform work that would normally be done by a paid employee. For example, if a paid staff member resigns, don't replace him/her with an unpaid intern or volunteer and expect them to carry the same workload as the paid employee.

When this issue was brought to my attention a few months ago, it was honestly the first I had ever heard of it. The more I read and researched, the more I was able to take a deep breath and chill out. My feeling is that these lawsuits are strictly targeting for-profit companies who use free volunteer labor in lieu of paying employees, and that unpaid internships are still safe, just so long as the rules and regulations are followed.

1. Susanna Kim (2013) Major League Baseball Sued by All-Star Volunteer for Unpaid Work, Retrieved from [www.abcnews.com](http://www.abcnews.com)
2. Shannon Dauphin Lee (2013) The Legal Issues with Unpaid Internships, Retrieved from [www.Online-Degrees.com](http://www.Online-Degrees.com)

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