

INTERNSHIPS: A BEST PRACTICE GUIDE FOR INDUSTRY

BFC Designers & Members

In line with our Positive Fashion initiative, the British Fashion Council is committed to helping create an industry that drives forward best practice behaviours and supports an inclusive, diverse and sustainable fashion industry.

Our aim is to ensure our industry fosters inclusive environments within businesses where workers are paid at least the National Minimum Wage and staff are supported and protected in the workplace. Establishing this as a benchmark standard will ensure that designer businesses are fulfilling their moral responsibilities and are compliant with UK law and their tax obligations.

As the issue of unpaid internships has been brought to light in the media, HMRC has made it clear that it will crack down on the fashion and beauty industries where historically interns have unfortunately not been dealt with in accordance with the law.

This Best Practice Guide has been developed with the support and input of members of the BFC Colleges Council. This will form part of a suite of documents including a Student Placement Learning Agreement with universities and a Best Practice Guide for Students, which we will share with the industry in due course.

Caroline Rush
CEO, British Fashion Council
29th June 2018

This guide has been created with input from legal counsel. However, it does not constitute formal legal advice. Should you feel you need additional advice, please feel free to reach out to the BFC or our legal representatives who would be happy to help:

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Find out more about our Positive Fashion initiative here:

<http://www.britishfashioncouncil.com/About/Positive-Fashion>

BACKGROUND – A BRIEF GUIDE TO THE LAW

This document is intended as a guide only and does not replace the need for legal advice. The consequences however are clear, and employers should note that there are no circumstances in which an individual who is contributing to the commercial aspects of your business should do so without being paid at least the National Minimum Wage.

NATURE OF RELATIONSHIP IS KEY

- By law, an individual's employment status is determined by the nature of the relationship and not the label (or job title) given to that individual by an organisation.
- It is imperative that an organisation is clear as to how they are engaging their staff as it will significantly shift their legal and tax obligations.

IMPLICATIONS OF GETTING IT WRONG

- Labelling interns incorrectly can have costly implications. Not only may the individual bring and succeed in a claim for wages they ought to have received, but HMRC may also investigate and penalise employers who have not paid tax and national insurance contributions that would have been due had the individual been paid correctly.
- In any event, it is strongly recommended that the business documents the relationship with an appropriate agreement as confidentiality and intellectual property are not always automatically protected.

EMPLOYMENT STATUS

- An individual's employment status determines their rights and their employer's responsibilities in law.
- Employment status can be a thorny legal issue. It is becoming increasingly clear that the law in this area needs revising and may see substantial change in the next few years. We will do our best to keep you updated of impactful developments in this area.

Worker

- A person is generally classed as a worker if they have a contract or other arrangement to do work or services personally for a reward, which can either be money or a benefit in kind (for example, the promise of a contract or future work). The contract doesn't have to be written.
- A worker is entitled to certain employment rights, including:
 - Receiving the National Minimum Wage;
 - Protection against lawful deductions from wages;
 - The statutory minimum level of paid holiday;
 - The statutory minimum length of rest breaks;
 - Not working more than 48 hours on average per week (or opting out of this right if they choose);
 - Protection against unlawful discrimination; and
 - Protection for 'whistleblowing'
- There is a growing trend by the courts to find that individuals are workers in order to ensure they are entitled to certain protection.

Please note that this does not constitute legal advice. We have tried to simplify the law as much as possible. For more information on employment law, please visit: <https://www.gov.uk/browse/employing-people>

For more information on worker and employer rights and obligations at work, please visit: <http://www.acas.org.uk>

Employee

- An employee is someone who works under an employment contract whether written or not. All employees are workers, but an employee has extra employment rights and responsibilities.
- An employee has all the rights workers have as well as other statutory rights including:
 - Statutory Sick Pay;
 - Statutory maternity, paternity, adoption and shared parental leave and pay (workers only get pay, not leave);
 - Minimum notice periods if their employment will be ending;
 - Protection against unfair dismissal;
 - Time off for emergencies; and
 - Statutory Redundancy Pay
- Some of these rights require a minimum length of continuous employment before an employee qualifies for them.

Volunteer

- If an individual is going to be required to work specific hours, on certain days, and to undertake specific tasks, they are deemed a worker and not a volunteer by law.
- In order for an individual to be considered a volunteer under employment law, the nature of the relationship must be truly voluntary, with minimal obligations on the part of the individual.
- Businesses cannot avoid paying the National Minimum Wage where due by saying or stating that it doesn't apply or by drawing up a written agreement that says someone is a volunteer when they are in fact a worker by law.

Self-Employed

- A person is self-employed if they run their business for themselves and take responsibility for its success or failure.
- A self-employed worker isn't paid through PAYE and doesn't have the employment rights and responsibilities of an employee. They still have protection for their health and safety.
- They look after their own tax and National Insurance contributions. Their rights and responsibilities are set out by the terms of their contract with their client. Interns are highly unlikely to fall into this category.

INTERNSHIPS

- Even though the term 'intern' is used commonly in the industry, it has no legal status on its own. An intern's rights depend on their employment status. If an intern is a worker or an employee (see definitions above), then they are due the National Minimum Wage.

Paid Internships

- Graduates and persons no longer studying undertaking internships (that cannot be considered work experience or volunteering) must be paid the National Minimum Wage.
- Students performing work that is not related to their course, such as to help finance their studies or during a gap year, are also entitled to the National Minimum Wage.
- Where an organisation needs an intern (student or not) as part of its essential working requirements and the focus of the relationship is on productivity rather than personal development, the intern must be paid. An intern's development may be a by-product but where it is not the key objective, the likelihood is that their relationship with the business will be that of a worker or an employee.

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Work Placements, Student Placements and Sandwich Placements

- A work placement, student placement or sandwich placement refers to a student spending up to a year working in industry as part of their university course. This allows students to experience the pace, atmosphere and discipline through their involvement in the day-to-day activities of a business.
- Work placements not exceeding one year undertaken by students as part of a UK-based higher education or further education course can be exempt from the National Minimum Wage. In order for this exemption to stand however, the emphasis of the work placement must be on enhancing a student's education and learning. It must be proved that tasks undertaken by a student while completing their work placement are only set to encourage this learning, otherwise an employer will be obliged to pay them the National Minimum Wage. Please note many universities with fashion faculties are discouraging their students from taking unpaid placements.
- Students from foreign universities fall outside the exemption and are always eligible for the National Minimum Wage.

Work Experience

- Work Experience generally refers to a specified period of time that a person spends with a business, during which they have an opportunity to learn directly about working life and the working environment. Some work experience positions offer people the chance to try their hand at particular tasks, others simply provide an opportunity to watch and learn.
- The nature, length and arrangements for work experience vary greatly and will impact the status of the individual in relation to the business. This should be considered before the work experience offer is made.
- If work experience only involves shadowing an employee for a short period (say one to two weeks) and no work is carried out by the individual, then the individual is likely to be a volunteer and the organisation will not usually have to pay that individual National Minimum Wage.
- It is illegal to employ children under 13 years old. For young workers (defined as being above the minimum school leaving age but under 18), there are restrictions to their working hours that must be observed, even during work experience.

OTHER LEGAL REQUIREMENTS

- All host companies need to have adequate Employers' and Public Liability Insurance in place.
- Employers have primary responsibility for ensuring the health and safety of all individuals working at the organisation.
- It is discriminatory to treat an individual less favourably because of a protected characteristic (defined in law as age, gender, nationality, disability etc.). This extends to the recruitment process. In the context of disability, a business should consider what reasonable adjustments can be made (i.e. to the role or the premises) to remove barriers to employment.

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BEST PRACTICE GUIDANCE

WORKPLACE BEHAVIOUR

- It is important as a business that you foster a friendly, hard-working and professional environment. Individuals should not be harassed, victimised or suffer emotional or verbal abuse in the workplace.
- Employers have a duty of care to staff legally and professionally. Work environments should be free from smoking, alcohol and drugs.

WAGE AND EXPENSES

- Even if an individual falls under the student placement wage exemption, the BFC Colleges Council recommends that they be paid National Minimum Wage while undertaking a placement at your organisation. Put simply, unpaid internships are directly blocking opportunities for the poorest students – at best limiting their access to valuable industry insights, and at worst totally excluding them. This will widen access to internships and increase the pool of talent that employers can draw from.
- You should recognise that no one should pay for business-related expenses, travel or resources themselves while working at your organisation.
- If you cannot commit to paying those who fall under the student placement wage exemption the National Minimum Wage, you should ensure that they are not out of pocket from undertaking a placement at your organisation.

WORKPLACE

- Employers must provide appropriate work premises, like an office or studio. It should be noted that to run a business from your home, you may need permission from your mortgage advisor/landlord, local planning office and local council. You may need to pay business rates and premises must be considered a commercial property under zoning law.
- A student placement must not work remotely. The emphasis of their placement must be on enhancing their education, which includes learning while working in a professional environment.
- All equipment and materials must be provided for staff by the employer. Student placements will not be able to use college equipment whilst on their placement.

WORKING HOURS

The below points refer to individuals aged 18 and over.

- On average, an individual cannot work more than 48 hours a week (normally averaged over 17 weeks). An individual can choose to opt out of the 48 hour week by signing an opt-out agreement with their employer. They can also be asked to do so by their employer, however they cannot be sacked or treated unfairly if they refuse. Opting out must be voluntary and in writing. The opt out agreement can last indefinitely or for a certain period. It can be cancelled with notice at the individual's request even if it's part of an employment contract.
- Individuals should have one day off a week and a minimum 11 hours' rest between each working day. Individuals should be offered a minimum 20 minute break for every shift lasting more than six hours. This break cannot be at the beginning or end of a shift. Employers must also allow their staff any breaks they need as a result of a health condition or disability.
- Staff should be compensated for overtime with lieu days or additional remuneration.

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WORKPLACE SUPERVISION

- New recruits should be supervised by a Line Manager in order to ensure proper guidance is in place. Their progress and development should be appraised and communicated.
- It is essential that an induction to the workplace takes place on the first day, including health and safety aspects and any work that an individual will be undertaking in line with risk assessments. An effective induction will give your staff responsibility over tasks, outline their day-to-day duties and set out the company rules.
- Student placements should be given a training and work programme that will last for the duration of their placement. This must remain relevant to their studies, improve their understanding of how the fashion industry works and provide them with work that develops their skills.

For more information on the Best Practice Guide for Industry, please contact:

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This paper has been developed for industry with Sheridans and members of the BFC Colleges Council:



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