

# The ‘Down-under’ on Unpaid Internships

An

NZRise

Guidance Paper

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## Disclaimer

This document is intended to be of assistance when considering the legal issue of unpaid internships in New Zealand and help inform the reader about their benefits, negatives and risks. This analysis is based on considered legal information and precedent and informs the opinion of this policy document.

However, **this document is not to be considered legal advice** applicable to any particular circumstance. You are explicitly advised to seek legal advice from a lawyer for your particular circumstances about anything that may possibly be or become related to any legal proceedings.

If you are an intern or are considering this information about an intern in your life or enterprise you shouldn't take anything from this document on face value.

**You can get free legal advice from the Community Law Centre and find the nearest available branch or outreach from their website at <http://communitylaw.org.nz/>**

## Introduction

NZRise considers that New Zealand still has more room to chart an independent policy direction about unpaid internships. New Zealand has not adopted practices around internships anywhere near the extent they have been in the USA but also follows Australia closely which is experiencing concern about practices of unpaid internships.

For the many legal and ethical reasons described above in this paper it is the strong policy stance of NZRise that New Zealand enterprises should not offer unpaid internships and that young or vulnerable persons should be empowered by a culture where they do not feel pressured to accept them.

This document was drafted to support the NZ Rise position on internships (below).

NZ Rise's position on internships is that all interns should be paid a fair market wage.

Accordingly, we believe that internships should consist of the following characteristics:

- Interns should be paid at least the minimum wage for all hours of their internship and preferably (at least) the living wage.
- Internships should primarily be about developing the talents of interns with a hope of bringing talent into your companies our industry.
- All interns should be treated the same as employees and with dignity regardless of sex, sexuality, disability, age, race, ethnicity, religion, culture or other arbitrary feature.
- All interns should be supported in their position and given opportunities to grow in their learning.
- Companies should consider bringing diversity to our industry and reduce inequality as a key part of any internship.

We support any company undertaking the above and are happy to work with companies and connect with the wider industry regarding this Policy Position.

# Summary

A significant introductory section of this paper is spent analysing the legal and social status of unpaid internships in the United States of America (USA). This is because the USA is considered to be the major first adopter of the practice of internships in general and particularly unpaid internships.

The USA's experiences and practices informs global trends and have affected New Zealand already. Another relationship of key importance is the Australian experience of unpaid internships. Australia has arguably followed US trends with respect to unpaid internships much faster and more significantly New Zealand has.

However, New Zealand navigates many of the same demographic and economic struggles as Australia and tends to eventually follow its trends. Some of the Australian legal and policy response has already been adopted to a degree through New Zealand case law on this exact reasoning.

The intention of this document is to help inform and assist New Zealanders to form an independent policy direction that best suits its own circumstances. There are also ethical concerns noted by NZRise about the practice of unpaid internships.

This paper with concludes particular recommendations endorsed by NZRise that are considered with a focus on the tech sector it is involved in but which are broadly applicable to NZ enterprises.

## **A note regarding the scope of this paper:**

A great number of issues overlap between paid and unpaid internships as well as other types of employment issues or trends such as flexible work, trial periods and more. This paper aims to focus specifically on the issue of unpaid internships only in detail.

As this paper considers unpaid internships it only goes as far to consider what essential features makes a legal unpaid internship in New Zealand and what could 'unmake' an unpaid internship into something else: it does not seek to consider particular circumstances or consequences that could follow after that.

**This is another reminder to seek legal advice such as from the Community Law Centre before you attempt to apply any of the information in this document to any particular circumstances or proceedings. This document does not provide legal opinions suitable for your circumstances.**

## **A view to the USA: “The Intern Nation”**

In the USA there are an estimated 500,000 to 1,000,000 people working in unpaid internships in a given year<sup>1</sup>. This estimate comes from the 1,500,000 total internships which are considered to be filled each year in the USA. Some measurements of the amount of the total internships that are unpaid have been just less than half at 47%<sup>2</sup>.

Understanding the extent of unpaid internships is difficult because of a lack of reported data in general and a further lack of clarity of what is being reported as a ‘paid’ internship. Some interns may receive compensation hourly, a fixed stipend or ‘in kind’ such as reimbursement with food, petrol or parking that may not be part of advertised conditions of the internship<sup>3</sup>.

However, it is clear that unpaid internships have been growing at a large pace in the USA and are increasingly recognized or accepted as an option by young persons to get necessary experience where they were not by previous generations. Doing an unpaid internship is now considered within many white-collar and creative industries almost mandatory to have a chance of gaining an entry level position given competition among graduates.

### **US legal standard: No intern should be ‘suffered or permitted to work’**

It would be wrong to immediately characterise internships in black and white terms. Most people would accept unpaid internships could significantly benefit an intern, potentially at a much lesser cost than alternatives to gaining equivalent experience. Some may argue the presence of an intern - being incorporated within the operations in many kinds of industry - is itself a cost to the employer, comparable to the costs of training new staff. A majority of interns still report that internships improve their employment prospects<sup>4</sup>.

In the USA it is considered legal to create an unpaid position in the nature of an internship only if the position complies with a six element test set out by the Department of Labor. This is based on the Agency’s interpretation of the Federal Labor Standards Act<sup>5</sup>:

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;

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<sup>1</sup> Ross Perlin *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy* (1st ed, Verso Books, New York, 2012)

<sup>2</sup> Dylan Matthews “Are unpaid internships illegal?” (13 June 2013) Washington Post <<https://www.washingtonpost.com/news/wonk/wp/2013/06/13/are-unpaid-internships-illegal/>>

<sup>3</sup> Blair Hickman “What we learned investigating unpaid internships” (12 July 2013) ProPublica <<https://www.propublica.org/article/what-we-learned-investigating-unpaid-internships>>

<sup>4</sup> Ibid., 3.

<sup>5</sup> Wage and Hour Division “Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act” (April 2010) Department of Labor <<https://www.dol.gov/whd/regs/compliance/whdfs71.htm>>

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.

Recognition of the limited scope of beneficial unpaid internships which should not exploit labour market appears to be the intent of the guidelines by the US Department of Labor.

### **The US Reality**

Unfortunately, the reality appears that compliance with these rules is as messy as the data available on the interns and internships themselves. Most information that has been unearthed about non-compliance and working conditions of interns has come from a handful of lawsuits. Rules of thumb or heuristics would suggest that we only know the tip of the iceberg of the illegal or controversial practices.

Relatively few illegally unpaid interns have the resources for legal action for back wages or the motivation to do as it may appear to ‘bite the hand that interned them’ and sour any benefits they may have accrued from the experience. However, there has been a number of cases in recent years particularly testing the “Employee vs. Intern” distinction.

### **Legal uncertainty**

Though there have been a few lawsuits taken directly on behalf of allegedly exploited interns these cases have managed to produce dramatic, conflicting and contradictory results across different state jurisdictions<sup>6 7</sup>.

As at October 2016, the law is considered to be in an uncertain state despite the relatively clear six step test outlined by the Department of Labor and also the longstanding Supreme Court precedent in the United States that deference is given to the Agency’s (The DOL) interpretation of the law that they have responsibility to administer<sup>8</sup>. This is because different state courts have themselves disagreed on what the Agency’s actual interpretation is: one court holding that the steps are a ‘framework’ to approach an individual case and another holding they are a rigid six-element test<sup>9</sup>.

Needless to say there is no strong legal declaration about interns that inspires confidence or certainty. Similarly there has been little uniformity or results of these lawsuits or even non-legal complaints with some employers opting to change intern’s status to minimum wage (i.e. *The Nation*) employees and some opting to close their intern programs altogether (i.e. *Vogue*).

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<sup>6</sup> Claire Zillman “Unpaid interns have their day in court - again” (29 January 2015) Fortune  
<<http://fortune.com/2015/01/29/unpaid-internships-legal-battle/>>

<sup>7</sup> Ross Perlin “Interns victimized yet again” (3 July 2015) New York Times  
<<http://www.nytimes.com/2015/07/03/opinion/interns-victimized-yet-again.html>>

<sup>8</sup> *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)  
<[https://en.wikipedia.org/wiki/Chevron\\_U.S.A.,\\_Inc.\\_v.\\_Natural\\_Resources\\_Defense\\_Council,\\_Inc.](https://en.wikipedia.org/wiki/Chevron_U.S.A.,_Inc._v._Natural_Resources_Defense_Council,_Inc.)>

<sup>9</sup> *Ibid.*, 6.

Despite a taking a strong public stance and announcement of stricter enforcement of guidelines the Department of Labor the USA has not seemed able to enforce these rules against for-profit companies on any scale that would force large scale compliance or ‘culture change’<sup>10</sup>.

## **Conclusion**

Clearly, there is lot that should or could be happening in the USA to address a variety of issues around internships. These include progress on:

1. Challenging cultural acceptance of unpaid internships by young people
2. More complete and transparent information on about the experiences and treatment of interns
3. Compliance with federal law about treatment of unpaid interns by firms
4. Clarified higher court legal precedent about the legal status of interns
5. Increased enforcement of the law about unpaid internships by the Department of Labor.

Regardless, it is clear that unpaid internships are not going anywhere from the landscape of the United States anytime soon. Any major changes on any of the above issues will still take time to flow through to the young people who are considering an unpaid internship as an option, those who are currently in them, or those who may have been exploited by them.

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<sup>10</sup> Kara Brandeisky, Jeremy B. Merrill “How the Labor Department Has Let Companies Off the Hook for Unpaid Internships” (9 April 2014) ProPublica  
<<https://www.propublica.org/article/how-the-labor-department-let-companies-off-hook-for-unpaid-internships>>

## **New Zealand: A direction to chart.**

“What you have is a bit of a mess in the law at the moment, mainly because it doesn’t cope with that situation very well. It’s quite difficult to fix up... [Internships] may give people experience, but the employers aren’t doing it for nothing.”<sup>11</sup>

- Professor Anderson, Victoria University School of Law

“I haven’t got the statistics to say that they are common ... we have large organisations who have structured paid internships ... SME’s sometimes have problems paying ... a lot of misunderstanding about internships and payment”<sup>12</sup>

- Catherine Stephens - Auckland University Career centre

“No matter if you undertake an unpaid or paid internship, an Internship in general should be viewed as an investment for the future, an opportunity to gain experience, references and skills that you will put to good use in your career.”<sup>13</sup>

- Internships New Zealand

## **Official advice from Employment NZ<sup>14</sup>:**

### **“Unpaid work experience, trials and internships**

If an employer is thinking of having somebody do an unpaid work trial or internship, or work experience, they should:

- make absolutely clear that the position is a volunteer position and that the person does not expect payment or other reward. This should be done in writing
- make sure that the volunteer does not receive any payment
- avoid getting an economic benefit from the work done by the volunteer
- avoid having the volunteer do work which is integral to the business, that is, work that a full-time employee would ordinarily do
- limit the duration of work and the hours worked by the volunteer. The longer a person volunteers and the more hours they work, the more likely they are to be an “employee.”

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<sup>11</sup> Elle Hunt “A messy area of law” (27 November 2013) The Wireless  
<<http://thewireless.co.nz/themes/free/a-messy-area-of-the-law>>

<sup>12</sup> Interview with Catherine Stephens, Auckland University Career Development and Employment Manager (‘The Wire’, 95bfm, 17 August 2015)  
<<http://95bfm.com/assets/sm/223186/3/WireCatherineStephensMiriamBookman17Aug2015t.mp3>>

<sup>13</sup> “Unpaid or Paid internships?” New Zealand Internships  
<<http://www.internships.co.nz/paid-internships-new-zealand/>>

<sup>14</sup> “Volunteers” Employment New Zealand  
<<https://employment.govt.nz/starting-employment/who-is-an-employee/volunteers/>>

## Internships in New Zealand: a snapshot from the Author

The author has considered source material including academic sources, news articles and legal cases about internships in New Zealand and about the USA. From this and drawing on his own 17 years of living in New Zealand the author hazards to suggest four key themes that characterise the landscape of ‘internships’ as we know them in New Zealand:

- **Small businesses dominate New Zealand industries**<sup>15</sup>: From this, it seems reasonable to suggest there will be significant variance in practices of internships and of expectations and experiences by interns. Issues with internships that arise may more likely be classified as a ‘personal matter’ between the intern and the small enterprise rather than about the nature of internship itself. Internships at smaller organizations are not necessarily offered continuously or even advertised. Because of this internships may not or never be considered as ‘institutionalized’ as they are in the USA even as they may grow in number simply because of reduced visibility.
  - The dominance of small business also appears to lend to some opinions supportive of internships in New Zealand, particularly in specialized services fields for example engineering. The learning curve for these specialized industries may be high and despite their relative economic demand smaller firms in NZ may not have the resources to pay an intern minimum wage.
- **Major corporations/NGO’s with institutionalized internships**. These are the notable exception to the SME dominated landscape in NZ with many multinational organisations drawing from global policy and experience to implement unpaid internships. These unpaid internships have been a particular of focus of criticism due to their apparent economic exclusivity<sup>16</sup>. Because the relationship between intern and organization is not as personal, this appears to have lead to more perceived freedom to speak out on related issues<sup>17</sup>.
- **Tech ‘Startups’**. As New Zealand startup culture attempts to model itself on or against ‘Silicon Valley’ style practices it would seem reasonable to expect growth of unpaid internships in this sector. This is discussed further below.

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<sup>15</sup> “97% OF ENTERPRISES HAVE FEWER THAN 20 EMPLOYEES (473,846 ENTERPRISES)” - “Small Business Factsheet” (July 2015) Ministry of Business, Innovation & Employment <<http://www.mbie.govt.nz/info-services/business/business-growth-agenda/sectors-reports-series/pdf-image-library/the-small-business-sector-report-and-factsheet/small-business-factsheet-2015.pdf>>

<sup>16</sup> Interview with employment lawyer Andrew Scott Howman, VUWSA President Rick Zwaan, executive director of Amnesty International Grant Bayldon (Kathryn Ryan, Nine to Noon, 18 February 2015) audio at <<http://www.radionz.co.nz/national/programmes/ninetoon/audio/20167685/are-full-time,-unpaid-internships-exploitative>>

<sup>17</sup> Ex. United Nations See: Aisha Gani “Unpaid UN intern who slept in tent quits after media uproar” (12 August 2015) <<https://www.theguardian.com/world/2015/aug/12/unpaid-un-intern-who-had-to-sleep-in-a-tent-quits-after-media-uproar>>



- **Intersection with immigration.** Unpaid internships seem to be considered by some as a way improve a candidate’s immigration profile. I consider this issue a wider one and outside the scope of this paper but basic legal aspects of work visas and legality of unpaid internships are discussed below.

### **Evidential base and legal precedent about unpaid internships in New Zealand.**

There is no particular individual authority on unpaid internships in New Zealand in terms of policy. More recently there are a number of articles in the news, on the websites of law-firms<sup>18 19</sup>, HR agencies<sup>20</sup> and the subject of a handful of radio interviews. These have been all considered but overall it seems clear the issue has not reached public consciousness or acute concern in New Zealand.

Searching the New Zealand parliamentary record of debates, Hansard, the term unpaid internships or even internships does not appear to bring up any political speeches of concern or advocacy about the issue. It follows to note there has also not been any government inquiry or report from any particular Government Agency.

The closest authoritative report is from Australia. Produced by the Fair Work Ombudsman in 2013 the report “The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia Experience or Exploitation?” is extensive. This report seems to support the claim that unpaid internships have become an issue in Australia<sup>21</sup>. The Fair Work report totals over 382 pages and considers a number of international perspectives including six pages concerning New Zealand<sup>22</sup>.

This Fair Work report was also cited in what is perhaps the most important legal precedent in New Zealand in this area, the 2013 case of *Salad Bowl v Amberleigh Howe-Thornley*<sup>23</sup> (“Salad bowl”). The Salad Bowl case has been further cited and affirmed for its comments on internships in an Employment Tribunal Decision as recently as August 2016<sup>24</sup>.

The *Salad Bowl* case is the source of a significant amount of legal analysis that follows in this report and is worth reading directly by any interested party about unpaid internships in New Zealand. The author asserts *Salad Bowl* will either be further affirmed or have to be rejected or modified in any future development of NZ law on unpaid internships. Either way it will be relevant.

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<sup>18</sup> “When an intern’s labour becomes free labour” (8 September 2015) Dundas Street Lawyers

<<http://dundasstreet.co.nz/News/When-an-intern-s-work-becomes-free-labour>>

<sup>19</sup> “The rise of the volunteer intern - what you need to know” (18 September 2014) MinterEllisonRuddWatts Lawyers

<[http://www.minterellison.co.nz/The\\_rise\\_of\\_the\\_volunteer\\_intern\\_-\\_what\\_you\\_need\\_to\\_know\\_09-18-2014/](http://www.minterellison.co.nz/The_rise_of_the_volunteer_intern_-_what_you_need_to_know_09-18-2014/)>

<sup>20</sup> Miriam Bell, Stephanie Zillman (3 September 2012) HRM

<<http://www.hrmonline.co.nz/news/making-unpaid-internships-functional-not-exploitative-143350.aspx>>

<sup>21</sup> Andrew Stewart, Rosemary Owens *The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia: Experience or Exploitation?* (University of Adelaide, 2013)

<sup>22</sup> Ibid, at p, 201-207

<sup>23</sup> *Salad Bowl v Amberleigh Howe-Thornley* [2013] NZEmpC 152 CRC 10/13

<sup>24</sup> *MBIE v Alpine Motor INN & CAFÉ* (2008) LIMITED [2016] NZERA Christchurch 130 5603783

In brief, understanding ‘legal unpaid internships’ in New Zealand:

1. Interns are volunteers.
2. Interns must understand they are a volunteer. They must also be consistently treated as volunteers to legally remain a volunteer.
3. Interns are still a health and safety responsibility of organisations comparable to employees while being volunteers.
4. For immigrants, a work visa is strictly required for any work which is not volunteer work. This includes ostensible ‘volunteer work’ compensated with accommodation, food, petrol or otherwise.
5. By definition an Intern cannot be an asset to an enterprise. They must always be considered a liability.

What each of these points means is elaborated below. If you can understand these five points, you may be ready to minimize your legal risk and take on an unpaid intern. But this still raises ethical considerations which you should consider.

### **Interns are Volunteers**

From the outset, it is important to know there is no direct legal definition of an unpaid intern under New Zealand labour law. A legal unpaid internship under New Zealand law is closely tied to the definition of a volunteer<sup>25</sup>.

Section 6(1)(c) of the Employment Relations Act 2000 defines a volunteer as a person who:

- does not expect to be rewarded for work to be performed as a volunteer; and
- receives no reward for work performed as a volunteer.

Importantly, this definition is contained in the same section as the definition of an employee. If the conditions of a volunteer are not met there is a strong presumption a person is an employee. This possibility will at least be strongly considered by any legal authority if the status of a volunteer comes under scrutiny<sup>26</sup>. However, there are a few recognized exceptions to the definition of employee such as being defined as a contractor by law but these are quite specific to particular situations and industries<sup>27</sup>.

This legal concept of volunteership is generally easily understood and applied in cases such as voluntary work for a charity of an NGO, a local sports club, or a community organisation which generates little or no economic activity. However, as soon as an intern is involved in or near economic activity in an enterprise it becomes more tenuous. If a person has no control over the time and amount of work they do it is also unlikely to be considered volunteer work.

**The Intern must understand they are a volunteer. They must also consistently be treated as one to legally remain a volunteer.**

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<sup>25</sup> Ibid., 14.

<sup>26</sup> Ibid., 18.

<sup>27</sup> Exceptions to the definition of ‘Employee’ include film workers under the [Employment Relations \(Film Production Work\) Amendment Act 2010](#) and for certain professions such as [Real Estate Agents](#) or [Sharemilkers](#).

It is important from a legal perspective that any intern does not have any expectation of remuneration for participating in an internship. If any part of the internship is classified or described as ‘work experience’ or ‘work trial’ with a promise of eventual paid employment the internship may already be set up for failure to comply with the law.

It is worth considering the very short term of the work trial in *Salad Bowl* that still led to conditions of employment being found by a Judge in the Employment Tribunal. In *Salad Bowl* the defendant applied for a part time position in hospitality and was granted a three hour work experience trial. The defendant was given the expectation that if the work experience and reference checks were satisfactory there would be an offer of employment.

Following the work trial employee the employer was unhappy for reasons that were ultimately not considered good cause for summarily dismissing her. The employee was dismissed via text message without the required processes for dismissal from employment. The defendant was not under a valid 90 day trial period that may have allowed dismissal without usual process because the employer had not opted for a written employment agreement among other basic mandatory processes such as paying minimum wage for the duration of three hours<sup>28</sup>.

The employee pursued an Employment Court case against the employer and was subsequently awarded lost earnings and compensation totalling \$6215. This was upheld on the appeal that became the *Salad Bowl* precedent case with important wider ranging comment that bear on the status of unpaid internships:

[25] Short work trials such as occurred in this case are less open to abuse of vulnerable job seekers, and therefore of less concern, than longer term varieties of the same phenomenon. Unpaid or inadequately remunerated ‘internships’, the acquisition of ‘work experience’, and other like categorisations of long-term unpaid or underpaid work, especially in times of high unemployment and/or in fields where there is an over-supply of applicants for work, have attracted the attention of academics and practitioners recently in Australia and elsewhere. This has resulted in the production of a substantial report on this phenomenon for Fair Work Australia. Many aspects of this comprehensive research and report are applicable to New Zealand. This judgment, however, decides the particular case, although insofar as issues of law are concerned, with regard to the broader picture of the legal status of trial work.

- GL Colgan Chief Judge in *Salad Bowl*, 16 August 2013

If an unpaid internship is strictly classified in a description or a written agreement as voluntary and with no direct promise of subsequent paid work then there would appear to be no employment relationship between the parties. The minimum statutory entitlements such as minimum wage and holidays would not apply.

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<sup>28</sup> It is worth observing that had the defendant signed a written employment agreement with specific terms about a three hour trial and the provision for a 90 day trial period that they could have potentially been dismissed summarily. The employer would also not have become liable for several thousand dollars.

However, if any payment is given (even if it is below the minimum wage entitlement) and the work that is being undertaken is bringing economic or commercial benefit of the organisation it is immediately very, very difficult for an organisation to argue that the intern is not an employee. Maintaining this relationship is especially fraught if the internship is of a long-term nature.

Though the *Salad Bowl* case deals with the specific case of an explicit ‘work trial’ it appears to signal a strong view that the Courts are willing to fully apply these legal definitions and requirements to apparently small issues. The approach in *Salad Bowl* has been affirmed in a very recent Employment Tribunal case *MBIE v Alpine Motor INN & CAFÉ* which further confirms that *any kind of compensation* including food and accommodation for the work offered precludes a person being considered a volunteer.

MBIE v Alpine Motor INN & CAFÉ (2008) LIMITED [2016] NZERA Christchurch 130:

[54] Even if I am wrong, and Ms Kaur did not expect to receive pay for that work, she was working, according to what Mr Hohneck said on the audio recording, as consideration for accommodation and food while she was waiting for her full work visa to be processed. Such a scenario precludes her status as a volunteer. **A volunteer is someone who gives their time and skills for free, without obligation, sometimes with out-of-pocket expenses being paid. To work in return for accommodation and food is quite different, and denotes a legally binding contractual arrangement.**

[55] **Volunteer work is usually for the benefit of a community, charity or some other social group, such as a sports organisation. It is not usually for a private enterprise. That arrangement would be more like an internship, for which it is strongly arguable that payment should be made.**<sup>29</sup>

David Appleton  
Member of the Employment Relations Authority  
4 August 2016

### **Interns are still a Health and Safety responsibility of enterprises while volunteers**

It is also worth noting that section 3C of the Health and Safety in Employment Act 1992 explicitly includes unpaid ‘volunteers’ making any organisation responsible on the same level as an employee for their well being during any internship.

### **Immigration & Visa’s**

Any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food or clothing allowances), services (e.g. transport costs, airfares, etc) or

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<sup>29</sup> “I refer to the comments made by His Honour Chief Judge Colgan in *Salad Bowl Ltd v Howe- Thornley*, [2013] NZEmpC 152”

stipends that are offered as part of an internship could appear to be classified as ‘work’ for the purposes of immigration law and require an intern to have an appropriate work visa<sup>30</sup>.

**By definition an Intern cannot be an asset to your enterprise. They must always be considered a liability.**

One common way to approach valuing a business is to consider its asset and liability position to calculate the Net Asset Value:  $\text{Assets} - \text{Liabilities} / \text{No\# of Shares} = \text{Net Asset Value}$ .

This valuing method is also a useful way of properly understanding an intern. At best, an intern is an investment for the future in the industry, the country, and maybe will benefit the company itself. However, if an unpaid internship is structured in a legal manner, there is no expected reward comparable to something such as a contract or employment agreement.

If you are a potential investor or owner of an enterprise such as a startup you should be properly aware if an intern’s work is being considered asset or if they are generating economic activity for the firm. An intern should not be pushing code in development, updating the front-end or doing design work, or even operating a business-generating social media account. It is very likely such an ‘intern’ would fail the legal test of being a volunteer.

Any work done by interns which does not meet the standard of volunteer work poses significant risk for any investor who invests into an enterprise knowingly or unknowingly, as it is effectively an undisclosed legal liability, and distorts the valuation of economic assets of the enterprise.

## **Ethical Issues**

In addition to the above legal issues that could lead to financial penalties and obligations there are also inherent ethical problems in terms of asking anyone to undertake an unpaid internship. Long term or full time unpaid internships are likely to reduce the diversity of applicants gaining experiences in various fields due to their economic exclusivity. Those who are supported by family or personal wealth are more likely to be able to participate in these internships than those those from lower socioeconomic backgrounds and minorities.

The New Zealand [Summer of Tech](#) Program makes it explicitly clear that any internship should be seen as an [investment](#) in the future of the person, the company and in New Zealand and should be remunerated properly<sup>31</sup>.

Research from the USA also makes it clear that internships that are paid are much more likely to lead to a paid position in the future<sup>32</sup> thus disincentivizing people from accepting an unpaid position in the first place.

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<sup>30</sup> See *MBIE v Alpine Motor INN & CAFE* & “Can I do unpaid work while working in New Zealand?” New Zealand Immigration - Already have a Visa  
<<https://www.immigration.govt.nz/new-zealand-visas/already-have-a-visa/my-situation-has-changed/work/can-i-do-unpaid-work-while-working-in-new-zealand>>

<sup>31</sup> The **minimum** wage for Summer of Tech 2016 is \$20 per hour

<sup>32</sup>Suzanne Lucas “A strong case for why you should pay your interns” (22 April 2014) Inc.

<<http://www.inc.com/suzanne-lucas/a-strong-case-for-why-you-should-pay-your-interns.html>>