

CASE STUDY

Stay smart when hiring summer interns

The Situation

As the summer holiday approaches, many eager university students will be looking at working as an intern to gain work experience. For many businesses, hiring summer interns is a great way to scout out potential talent and build their brand.

In Hong Kong, there is no real distinction between interns and regular employees, both of whom generally have the same statutory rights and entitlements. However, mandatory benefits and entitlements tend to be limited for summer interns.

While there is no legal requirement for written contracts for internships, it is best to have a written agreement to protect the interests of both sides.



The Legal Implications

All employees, including full-time, part-time and casual employees, must be paid a statutory minimum wage of HK\$32.50 per hour. However, student interns are exempt from the requirement if they fulfil one of two criteria.

The first is if the student is a local undergoing a period of work arranged or endorsed by a specified local education institution, and the work is a compulsory or elective component of the requirements of a full-time accredited programme being provided by the institution.

The second is if the student is not a local, but resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution, and the work is a compulsory or elective component of the requirements of a full-time education programme, at degree or higher level, for a non-local academic qualification provided by the institution.

Aside from wages, interns who have

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been "continuously employed" for at least four weeks (as defined in the Employment Ordinance) are entitled to one rest day every seven days, which can be paid or unpaid. Interns must take statutory holidays but, if they are employed for less than three months, their statutory holidays can be unpaid.

If an intern is off sick for four consecutive days or more after one month of continuous employment, the intern is also entitled to sickness allowance at 80 per cent of the average daily wage.

Student interns who are not permanent residents of Hong Kong cannot work here without a training visa from the immigration department, the length of which is limited to 12 months.



The visa application process will generally take six to eight weeks, but may take longer if the department has further questions or require further information from the sponsoring company.

When assessing a training visa application, the immigration department will generally take into account whether the training would enable the interns to acquire special skills and knowledge not available in their home country. The department will also consider the interns' academic disciplines and whether the proposed training is suitable to further the student's academic pursuits.

If non-local student interns have a valid training visa and reside in Hong Kong during their internship, they are regarded as "residents" in Hong Kong for their period of stay and can be exempted from the minimum wage requirement.

In certain situations, the placement of interns can be perceived as problematic and cause compliance issues. This can include, for example, when a placement is used to win business with clients, or to gain favour with government officials by granting internships to their relatives.

If the internship violates bribery laws, such as the Prevention of Bribery Ordinance, or overseas laws such as the UK Bribery Act or the Foreign Corrupt Practices Act, sanctions can be imposed.

Last summer, a bank had to pay US\$14.8 million to settle US civil charges for giving internships to family members of officials linked to a Middle Eastern sovereign wealth fund, which violated US federal bribery laws. The case was part of an industry-wide sweep in which US regulators investigated financial institutions' business dealings with state-owned investment funds.

The Conclusion

Companies hiring interns should make sure they have a well-developed selection process, and that candidates are selected on merit. Staff administering intern programmes should be trained to understand the compliance issues that could arise.

Summer internships can provide great experience for students and companies. However, when hiring summer interns, bear in mind the legal requirements and pitfalls to ensure this is a smooth experience for both parties.

The information contained in this article should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases. If advice concerning individual problems or other expert assistance is required, the service of a competent professional adviser should be sought.