EXPERIENTIAL LEARNING AND INTERNSHIPS: LEGAL ISSUES

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The Minnesota State Colleges and Universities system is an Equal Opportunity employer and educator.
Outline of Today’s Webinar

Focus: Non-Allied Health and Other Less Formal Arrangements

- Theories of Institutional Liability for Student Placement
- Internship Agreements and Waivers
- Regulations Regarding Unpaid Internships
- State Authorization
- Hosting Student Interns
- Resources
Resources for Allied Health Issues

- Nursing Program – Memorandum of Agreement and Nursing Program Notices to Students.
- Medical Laboratory Technician and Phlebotomy Program(s)
- Paramedic Programs.
Institutional Liability for Student Internship Placement?

- **Negligence**
  - Duty
    - A foreseeable unreasonable risk of harm to another that is recognized by a court
    - Reasonable Person Standard
  - Breach
  - Causation
  - Damages

- **Duty to Warn? Duty to Investigate?**
Institutional Liability, continued

“Because modern law provides that a university is not ordinarily in loco parentis with its students, a university is not required to guarantee the safety of its students.”  

But: Special Relationships

- University in position to protect the student from harm;
- The harm is one from which the University would be expected to protect students
  - Vulnerable
  - Dependent
Institutional Liability, continued

Case Examples: No Duty

- *Judson v. Essex Agricultural & Technical Institute*, 635 NE.2d 1172 (Mass. 1994) (holding that technical school owed no duty to student to inspect internship site required as part of curriculum).
Institutional Liability, continued

Case Examples: Duty

- *Nova Southeastern University, Inc., v. Gross*, 758 So. 2d 86 (Fla. 2000) (holding that school had duty to student assigned to mandatory internship at site it knew was unreasonably dangerous).

- *Silvers v. Associated Technical Institute, Inc.*, 1994 WL 879600 (Mass. Super. Ct. Oct. 12, 1994) (holding that students could reasonably expect that the school’s placement office would make some effort to avoid placing students with an employer likely to harm them – site had orally requested only female applicants).
Other Theories:

- Title IX and other non-discrimination laws -- Prompt and Appropriate Remedial Action to Known or Should Have Known of Discrimination/Harassment Standard?
  - Application of Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education and System Procedure 1B.1.1 Report/Complaint of Discrimination/Harassment Investigation and Resolution
  - Application of Board Policy 1B.3 Sexual Violence Policy and System Procedure 1B.3.1 Sexual Violence Procedure
Other Policy Considerations

 Application of the Student Conduct Code.
 Academic Policies and Procedures, etc.
   Professional and Technical Standards for Required Internships
   Application of Standards to Social Media
Institutional Liability, continued

- Risk Management
  - Reasonable Due Diligence
  - Agreements
  - Disclaimers/Waivers

Internship Agreements

- A Tool in Framing Expectations and Avoiding Disputes
  - College/University
  - Site
  - Student
Internship Agreements

Consider when:

- Internship is mandatory;
- Student is more vulnerable or exposed to danger;
- College/University is deeply involved in creating internship;
- College/University wants on-going relationship with site;
- Student is a minor;
- Internship is used to satisfy professional licensing requirements.
Internship Agreements

- Student Training Experience/Internship Agreement
  - Optional from System Perspective
  - May be Mandatory at Campuses
  - Please send comments on its utility and content

- Nursing and Allied Health Clinical Agreements
  - required

- OGC or AGO review for non-MnSCU Templates
Releases and Waivers

- Can be evidence that the plaintiff assumed the risk of a particular activity
- Must be signed in advance of the activity
- Person signing the release must have a choice to avoid the activity
  - Not valid for mandatory class
  - Not valid for essential services
When to Get a Release/Waiver

You Want a Release For:

- Recreation Classes
- Camps
- Special Events
  - Fun Runs or other races
- *Field Trips and Other Short-Term Voluntary or Optional Learning Activities*
- Hazardous Activities
What Should a Release Include

- Specific Information about the activities
- Inherent risk associated with the activity
- Fact that injuries may occur
- Representation that participation is voluntary
- Acknowledgment that injuries may occur even when staff uses all due care

A template release is available on the OGC web-site www.ogc.mnsceu.edu and will be posted with this webinar.
Who Signs a Waiver/Release

- Each individual doing the activity
  - Not a captain on behalf of team
- Adults should sign in addition to minor child
- Must keep releases until statute of limitation expires:
  - 6 years from date of activity
  - 6 years from age of majority (18)
Insurance

- **Workers’ Compensation**
  - MnSCU is self-insured for worker’s compensation
  - College/University cannot agree to provide worker’s compensation for an unpaid student intern
  - MnSCU coverage extends only to employees

- **Liability**
  - State employees (and certain volunteers) entitled to defense and indemnification (Minn. Stat. §§ 3.732 and 3.736).
  - Students typically responsible for their own liability insurance

- **Health**
  - Students typically responsible for their own health insurance
Regulations Regarding Unpaid Internships


  - DOL focus
  - Lawsuits
Fair Labor Standards Act

- If “employee,” then:
  - Minimum wage
  - Overtime, etc.

- “Employ” means to “suffer or permit to work”

- “Interns in the ‘for-profit’ private sector who qualify as employees * * * must be paid at least the minimum wage and overtime compensation [if applicable].”
DOL FLSA Unpaid Intern Test

- The internships is similar to training which would be given in an educational environment;
- The internship experience is for the benefit of the intern;
- The intern does not displace regular employees and works under close supervision of existing staff;
- The employer derives no immediate advantage and operations may actually be impeded;
- The intern is not necessarily entitled to a job at the conclusion of the internship; and
- The employer and intern understand the internship is unpaid.
Unpaid Internships, continued

Practical Analysis

- Is academic credit granted?
- Is skill development reasonably related to the academic program?
- Is there College/University faculty or staff involvement?
Unpaid Internships, continued

- Be wary of “Verification” Requests.
- Award Academic Credit only if warranted and pursuant to normal and reasonable academic standards
  - journals; reflective papers
Some Thoughts on Hosting Student Interns

- MMB Form: Internship Agreement
- System Procedure 4.0.1 Use of Volunteers Procedure
  - Compliance with policies
    - For example, computer use policies
  - Access to protected data?
    - Instructed in Requirements; and
    - Confidentiality Form
Out-of-State Internships: State Authorization

- State Authorization = Process of Being Approved to Operate in a State (if required)
- Each State has Different Rules
  - In Some States, an Internship is “Physical Presence” Requiring Approval (or exemption).
- Resources
  - SHEEO 50-State Survey.
Additional Resources

- April 11, 2013 OGC Webinar: “Student Risk Management.”
- www.ogc.mnscu.edu
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