

## Client Alert

### Interns at Work

September 21st, 2010

**Summary: The law of March 31<sup>st</sup>, 2006, subsequently modified by the law of November 24<sup>th</sup>, 2009, and completed by the August 25<sup>th</sup>, 2010 decree, have redefined and detailed the conditions in which students can complete internships. These new regulations apply to all student internships in the workplace, whether they are enrolled in a French or foreign teaching establishment. As of September 1<sup>st</sup>, 2010, internships that are not inscribed in a teaching curriculum are prohibited.**

#### **Types of Concerned Internships**

The law of March 31<sup>st</sup>, 2006, modified by that of November 24<sup>th</sup>, 2009, applies to all internships, whether mandatory or not, save for:

- Internships that take place within the context of a continuing education program as defined in Part 6 (Book III) of the Labor Code;
- Young adults aged 16 years old or less who perform internships or simply come to the workplace to observe the organization, as defined by article L. 4153-1 of the Labor Code and articles D. 331-1 and following of the Education Code.

All internships which do not fall under these two afore-mentioned categories are thus concerned, regardless of the legal status of the company (public, private, non-profit, industrial and commercial public establishments).

#### **Status of the Internship in the Company**

An intern cannot be recruited for just any type of assignment. Indeed, a company cannot hire an intern to replace an employee (whether because of absence, suspension, or dismissal), to execute a regularly occurring task which corresponds to a fixed position within the firm, to handle a temporary increase in company activity, or to occupy a seasonal job. One should also note at this point that the antidiscrimination laws which apply to the hiring of employees also apply to the recruitment of interns (L. 1132-1 of the Labor Code).

As the intern is not linked by work contract to the company that hosts him or her, they do not possess the status of "employee". The sole purpose of their presence in the company is to acquire training and learn: though they may be asked to perform tasks of a professional nature, they are in the firm to learn and/or observe and are thus, contrary to employees, under no obligation to produce.

Despite this difference in status between intern and employee, all interns are nonetheless required to respect the company's internal guidelines so as to help ensure that operations run smoothly. These can include, but are not limited to, hours of work, sanctions, and rules pertaining to security and hygiene at work. If the company possesses a "règlement intérieur" (document outlining company rules and

regulations) – which are mandatory for companies with at least 20 employees on staff – the internship agreement must mention which rules will apply to the intern.

As a result of law 2008-596 of June 25<sup>th</sup>, 2008, in the event that the intern is hired into the company in which they performed their end-of-year internship, the duration of the internship is subtracted from their try-out period. Unless a more favorable condition stipulated by a collective agreement states otherwise, only up to half of the trial period duration can be subtracted in this way.

### ● **Duration of Internship**

The law of November 24<sup>th</sup>, 2009, stipulates that all internships must be inscribed within an educational curriculum and, as a result, are not restricted in length. The decree of August 25<sup>th</sup>, 2010, which details the practical applications of the law of November 24<sup>th</sup>, 2009, confirms that internships starting on September 1<sup>st</sup>, 2010, will have to be inscribed within a curriculum following the guidelines detailed below.

Nonetheless, the length of the internship must take place within the school year (generally from October 1<sup>st</sup> to September 30<sup>th</sup>), save for end-of-year internships which can be prolonged until December 31<sup>st</sup> of the same year, depending on the specific university's regulations.

To be considered “inscribed” within a curriculum, internships must meet the following two criteria:

- Their purpose and modality must be defined in the training plan.
- The student is to produce a work pertaining to the internship which will be evaluated by the training establishment.

As long as they meet the two afore-mentioned criteria, the following internships can also be considered as “inscribed” in a teaching curriculum:

- Training in the objective of helping professionally reinsert the students.
- Additional training intended to support the student's insertion in the workplace and validated as such by the training supervisor of the establishment where the student is enrolled
- Periods during which the student temporarily suspends his or her studies in order to acquire additional training on the basis of an agreement between the educational establishment where he or she is enrolled, and the company where the internship is taking place.

### ● **Internship Agreement**

As per the law of November 24<sup>th</sup>, 2009, the signing of a tri-partite internship agreement is now mandatory. The three parties to the agreement are the company, the student, and the teaching establishment. The agreement is drafted by the teaching establishment and specifies the parties, the training project, and the tasks to be performed during the internship. The following clauses must imperatively be included:

1. The listing of the tasks that will be given to the student, depending on the objective of the training
2. The internship start and end-dates
3. The intern's hours of work per week. If the intern is to work nights, during weekends, or on national holidays, this must be explicitly stated.
4. The amount of the stipend paid to the intern and the conditions of payment (see below for additional information)
5. Conversely, the list of advantages offered by the company to the intern, specifically as they pertain to food, lodging, or reimbursement of expenses incurred to complete the internship
6. The social security system under which the student benefits, including coverage in case of a work related accident, as mandated by article L.412-9 of the Social Security Code. In certain cases the student will also need to provide proof of “responsabilité civile” (civil responsibility) coverage.
7. The conditions under which the internship supervisors – one representing the educational establishment and the other the company – are responsible for the student's supervision.

8. The conditions under which an “Attestation de Stage” (Internship Completion Certificate) is delivered or, conversely, the way in which the internship will be validated in order for the student to obtain the diploma being prepared.
9. The way in which the internship can be suspended or cancelled.
10. The conditions under which the intern is authorized to be absent from work, notably in the case of school-related obligations.
11. The clauses of the “règlement intérieur”, if one exists, which will apply to the intern.

An amendment to the agreement must be drafted in the event that the internship continues past the initially stated end-date, or, on the contrary, if the internship is interrupted, or if a request for an unusually large amount of time-off has been requested.

In the absence of an internship agreement, or if the intern is considered to be a resource to the company in its own right, a link of subordination can be established which would lead the Labor Authorities to consider that the intern is in fact an employee – with the resulting consequences that this will have on the relationship linking the intern-turned-employee to the company.

The company must, on its end, establish a list of the internship agreements it has signed and keep said list regularly updated.

- **Internship Stipend**

Unless a collective bargaining agreement or collective agreement states otherwise, if the internship does not go over two consecutive months (instead of the three months prior to the law of November 24<sup>th</sup>, 2009), the company is under no obligation to pay the intern a stipend. Past these two months, the amount of the stipend due is either stipulated by industry branch agreement or by the applicable collective bargaining agreement. In the absence of a specified amount, the minimum hourly rate of the stipend due to the intern is set at 12.5% of the social security cap, i.e. 417 euros per month in 2010 for a full-time internship.

- **Social Security Contributions**

Neither the employer nor the employee will have to pay any social security contributions on the stipend if the hourly rate is inferior or equal to 12.5% of the social security cap, i.e. 417.09 euros per month in 2010 for full-time presence in the company. This cap is reduced proportionally in the event of a part-time internship.

If the employer gives the intern a stipend which is superior to the afore-mentioned tax-free amount, the social security taxes and contributions will be calculated based on the difference between the stipend and the tax-free amount.

Reimbursement of professional expenses (eg: reimbursement of commuting fare tickets), are not submitted to social security contributions, provided that they are being used according to purpose.

The monetary value of benefits in kind, however, is to be added to the amount of the stipend in order to calculate the amount of social security contributions due on the total amount.

- **Insurance coverage in the event of work-related accident or disease**

All interns benefit from coverage in the event of work-related accidents (at work or on the way to it), and illnesses (WA/WI). However, clauses which entitle the victim of WA/WI-resulting incapacity inferior to 10% to monetary compensation (Social Security Code, art. L. 434-1) do not apply to interns.

Determining who will be responsible for the interns' WA/WI coverage depends on the amount of the stipend:

- If the intern receives a stipend inferior or equal to the minimum amount, the educational establishment which has signed the tri-partite agreement is responsible for the employer's coverage contribution for the intern.
- If the intern receives a stipend superior to the minimum amount, the company which has signed the tri-partite agreement is responsible for their intern's coverage. In this case, the amount which serves as the basis for calculating the amount of contributions due is equal to the difference between the stipend paid to the intern and the minimum amount. The applicable WA/WI rate is the one the company usually pays for its employees.

In the event of an accident, determining the party responsible for declaring said accident to the CPAM (local state health insurance office) will depend on the place where it occurred, regardless of who is paying for the intern's coverage:

- If the accident took place during or due to the internship, the company is the one that will have to declare the accident. It is to address with minimal delay the declaration of the accident to the educational establishment where the intern is enrolled, and send a copy to the relevant CPAM.
- When the accident takes place while on campus or as a result of participating in training, it is the teaching establishment's responsibility to declare the accident to the relevant CPAM and address a copy, with minimal delay, to the company which has signed the tri-partite agreement.

### ● **Foreign Students and French Interns Completing an Internship Abroad**

In application of the principle of territoriality, foreign students completing an internship in France are subjected to French regulation governing internships as detailed above.

Bill #DSS/5B/2007/236 of June 14th, 2007, pertaining to the social security coverage of interns details the cases in which people might be exempted from enrolling in French social security coverage, and specifically how state coverage applies to foreign students in France, as well as French students abroad. Conversely, it also details the social security rights (benefits in kind, daily stipends...) available to interns depending on their situation.

#### Foreign Nationals Interning in France:

Foreign nationals from the European Union, European Economic Area, and Switzerland, who come to France to undertake an internship must possess the A1 (formerly E101) form, and justify of national insurance coverage for illness, maternity, and work-related accidents and illnesses from their home country so as to opt-out of enrollment in the French social security system.

Foreign nationals from countries not included in the categories listed above are all subject to French Social Security coverage obligations, save interns who fall under the French-Quebec agreement of December 19<sup>th</sup>, 1998, pertaining to students' social security coverage.

Foreign students who come from a country which is not a member of the European Union must have their tri-partite Internship Agreement approved by the Foreign Workforce Office of the DIRECCTE (Regional Labor Authority Office). The DIRECCTE's approval is necessary in order to obtain a short-stay entry visa (for nationals who are under obligation to obtain a Schengen visa), or long-term entry visa for internships over 90 days. The residence permit delivered to foreign students who come to France in order to complete a 90 day+ internship will carry the note "stagiaire" (intern) on the card (see the decree of May 29<sup>th</sup>, 2009 relative to the reception of foreign students, and the bill of July 31<sup>st</sup>, 2009 relative to foreigners who come to France in order to complete an internship).

#### French Students Completing an Internship Abroad in the Course of their Studies in France:

Interns' WA/WI coverage will depend on the amount of the stipend they are offered:

- If the stipend is inferior or equal to 12.5% of the social security cap hourly rate, WA/WI coverage is maintained for 12 months maximum. The educational establishment will be solicited by French Social Security to reimburse this coverage.
- If the stipend is greater than the 12.5% hourly minimum, the educational establishment is to verify with the intern that he/she benefits from adequate WA/WI coverage in the host country and that the company is handling expenses relating to such coverage.

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