Internships in Sports Management Curriculum: Should Legal Implications of Experiential Learning Result in the Elimination of the Sport Management Internship?

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Experiential learning opportunities such as internships and practicum classes are utilized in many academic sport management programs. These learning experiences provide students an opportunity to practically apply skill sets discussed as theoretical in the classroom; hence, the educational value is significant. The significance is demonstrated by the prevalence of internships in sport management curricula; 77% of sport management programs at the bachelor’s, master’s or doctoral level have an experiential learning requirement;¹ it is “the most common curricular component . . . [in all] sport management programs.”² While other programs of study may accept an internship experience as being worthy of credits towards graduation, the majority of sport management programs require such an experience for graduation. Further, the sport management internship often accounts for at least six credits, and in many cases up to fifteen credits, of a student’s degree program.

However valuable, these learning opportunities cannot be administered without concerns regarding legal issues—most notably, the potential impact of


the Fair Labor Standards Act of 1938 (FLSA) on internship providers, which has been recently scrutinized. Further, recent changes to sport management program accreditation standards may support the elimination of the mandated internship. Given the myriad of legal issues imposing potential liability on all parties involved in a sport management internship and the shift in accreditation standards, does the educational value of the internship experience still outweigh the legal risks associated with the internship requirement?

This article will attempt to ascertain whether sport management internships required by educational institutions are still advisable, given the potential legal ramifications for the student intern, college or university, and host organization. Part II will define and explain experiential learning; Part III will discuss the sport management program internship requirement from origin to present day, citing both past and present accreditation standards; Part IV will discuss legal issues related to the sport management experience, including tort liability, discrimination law and, most specifically, the FLSA; Part V will discuss the recent focus on whether sport organizations hosting sport management interns are violating the FLSA; and Part VI will discuss the potential implications on sport management curricula and accreditation, as well as present recommendations for educational institutions currently requiring sport management internships. The outcome of this discussion will result in an overall recommendation that, based on potential legal issues, sport management programs should consider activities other than internships to provide experiential learning.

II. DEFINITION AND EXPLANATION OF EXPERIENTIAL LEARNING THROUGH INTERNSHIPS

A. Definition

Experiential learning is a central component to many college students' education. Learning through experience occurs when a "student learns by actually doing or performing real-world tasks while engaged in a formal, structured field experience." Experiential learning has been long recognized as an effective means of learning, allowing students the opportunity to practice skill sets in a real-world setting, thus advancing their knowledge in a discipline. As noted, the majority of sport management programs mandate

5. See generally JOHN DEWEY, EXPERIENCE AND EDUCATION (1938).
that students participate in experiential learning by completing an internship or practicum. Internships offer full-time work experience, often conducted at an off-campus location, such as a host sport organization. Alternatively, practicum experiences are part-time commitments that are often performed in proximity to the campus or as part of a classroom experience. Both internships and practicum experiences are typically taken for credit and are unpaid.

B. The Internship Experience

The importance of experiential learning through internships is increasing. According to the National Association of Colleges and Employers [(NACE)] 2010 Job Outlook Survey, 75% of employers prefer job candidates with relevant work experience,” and more than 90% of employers prefer to hire interns who have worked for their organization. In fact, some have argued that “no single step in a sport management career path is as . . . valuable as an internship.”

This value is present because internships offer many opportunities such as (1) networking with industry professionals; (2) the ability to develop professional talents and behaviors; (3) the opportunity to develop, refine, and acquire specific skills; (4) assistance as they prepare for an entry-level position; and (5) a bridge to eliminate the gap between theory and practice. Further, internships provide “an opportunity for learning that is not available in the classroom.”

When a curricular requirement allows students to play an active role in a sport organization, the educational value of the degree program is enhanced.

There are six primary contributors to an internship, all who play a role in

7. Id. at 162.
8. 60.3% of college respondents reported a slight increase in the number of unpaid internship postings. Executive Summary, NACE Research: Unpaid Internships: A Survey of the NACE Membership, 2010, www.naceweb.org/knowledge/intern_pay/ [hereinafter NACE Membership Survey].
12. See Gargone, supra note 1, at 1.
13. Id. (citing George Cunningham et al., Anticipated Career Satisfaction, Affective Occupational Commitment, and Intention to Enter the Sport Management Profession, 19(1) J. SPORT MGMT. 43 (2005)).
determining the ultimate value of the experience. Contributors include (1) the student intern; (2) the internship coordinator; (3) the sport management program; (4) the college or university; (5) the host organization; and (6) the on-site supervisor. These entities work together to create the internship experience. Further, each participant has specific responsibilities that must be executed for the internship to be successful. The internship coordinator serves dual roles, first helping the student intern search and apply for internship opportunities, then evaluating the student's work product during the experience. The sport management program can be a department, major, minor, or concentration in which students enroll for the internship credit. The sport management program sets forth the learning objectives for the internship experience, while the college or university is the academic organization where the student is registered. The host organization is the sport entity that offers the internship opportunity. Finally, the on-site supervisor is the employee of the host organization who manages the student intern's daily tasks and assesses the student's progress towards the learning objectives.

In addition to providing a student experiential learning opportunity, the internship experience should benefit both the sport management department and the host organization. First, the sport management department wants the student's internship experience to be academically rigorous, thus achieving the mission of the program. This rigor can be demonstrated by requiring a student to fulfill various requirements, such as a reflective-learning activity or journal-linking goals and subsequent accomplishments, a research paper on a specific aspect of the sport industry that connects to the student's role with the host organization, or an internship project that challenges the student to use theoretical concepts and create value for the host organization.\(^1\) Equally important to the sport management program is awareness by the host organization. A host organization's knowledge of the preparation given to the student interns may increase future opportunities for other students at that site.\(^1\)\(^5\) The relationship between the host organization and the sport management program will ultimately affect the success of the internship program or experience.\(^1\)\(^6\) Success is also dependent on the benefits received by the host organization. The host organization's goals might be to utilize low-cost labor to complete a special project, screen entry-level employees, or


\(^{15}\) Jo Williams, Sport Management Internships: Agency Perspectives, Expectations and Concerns, 75(2) J. PHYSICAL EDUC. RECREATION & DANCE 30, 31 (2004).

\(^{16}\) Id. at 31–33.
build a relationship with a college or university.\textsuperscript{17}

The relationship between the sport management program and the host organization will be most successful if the needs of the host organization are met with a specific student that possesses the correct skill sets and understands his or her role as an intern. To gain this understanding, students often enroll in a pre-internship course taught by the internship coordinator.\textsuperscript{18} This class might use a textbook prior to the student leaving for the internship.\textsuperscript{19} The pre-internship lecture and these resource books prepare the student for working in a sport business environment.

Students who enroll in the internship experience often find themselves working over 400 hours in a semester for a host sport organization. This work experience is supervised by both the internship coordinator and an on-site supervisor. This on-site supervisor manages the daily activity of the intern and submits an assessment of the work product, ability, and attitude of the student. These assessment materials are a key tool in determining whether the student has fulfilled the goals of the internship, thus demonstrating the merit of the internship requirement per accreditation standards.

III. SPORT MANAGEMENT INTERNSHIP REQUIREMENTS PAST AND PRESENT: THE ACCREDITATION STANDARDS

Internships and practicum experiences have long been a vital component to sport management curricula.\textsuperscript{20} The aforementioned value of experiential learning has been recognized by sport management program accrediting bodies since program accreditation began. Over the last two decades, internships have been at the core of the sport management accreditation standards.

A. NASPE/NASSM

The National Association for Sport and Physical Education (NASPE) and the North American Society for Sport Management (NASSM) established the earliest curricular guidelines for sport management majors. In 1987, NASPE developed guidelines for existing sport management programs; less than two

\textsuperscript{17} Id. at 30–31.

\textsuperscript{18} SUSAN B. FOSTER & JOHN E. DOLLAR, EXPERIENTIAL LEARNING IN SPORT MANAGEMENT 132–33 (2010).

\textsuperscript{19} See JACQUELYN CUNEEN & M. JOY SIDWELL, SPORT MANAGEMENT FIELD EXPERIENCES (1994); FOSTER & DOLLAR, supra note 18; SUCCESSFUL INTERNSHIPS IN HEALTH, SPORT AND FITNESS (Frank B. Ashley ed.) (2000).

\textsuperscript{20} See id. at 1.
years later, NASPE joined with NASSM to develop a task force to further review the guidelines. This collaboration led to the formation of the Sport Management Program Review Council (SMPRC). In 1993, SMPRC printed the Sport Management Program Standards and Review Protocol. This publication listed twelve standards for undergraduate degree programs in sport management. To gain accreditation, a college or university needed to demonstrate that its sport management program adequately achieved all twelve standards. The standards measured various competencies to be included in course content. The twelfth standard, Field Experience in Sport Management, discussed the benefits of students participating in an in-depth practical experience before graduation and entrance into the sport industry. For a sport management program to gain accredited status, the field experience standard needed to be met. This standard established that sport management programs needed to require students to complete an internship experience during which the student would be directed and evaluated by a qualified faculty member, with proper management by the on-site supervisor at a host sport organization. As defined by the field-experience standard, an internship needed to include a minimum of 400 hours of hands-on experience after the junior year. The student intern was also required to write a performance work diary to be submitted to the faculty member who assigned the final grade. Thus, these specifically delineated requirements served as the basis of the required internship in accredited sport management programs.

B. COSMA

After many years of using the twelve standard accreditation model, NASPE and NASSM representatives met to discuss the proposed direction of SMPRC, including movement toward changes in the accreditation of sport management programs. In July 2008, the Commission on Sport Management Accreditation (COSMA) was established as “a specialized accrediting body whose purpose is to promote and recognize excellence in sport management education in colleges and universities at the baccalaureate

21. Id. at 2.
23. Id. at 9. The SMPRC standard specifically states that “[a]n undergraduate student will benefit from culminating in-depth practical experience(s) before entering the sport industry. These experiences help the student bridge the gap between classroom learning and practical application in sport settings. They allow students to explore career options, develop management skills, and gain a greater understanding of the total operations of sport organizations.”
24. Id. at 9–10.
and graduate levels” through specialized accreditation. While this new commission “recognizes the role of practical and experiential learning as a . . . component of sport management curricula,” the new COSMA standards present a departure from the SMPRC standards regarding the required internship. COSMA now lists six Common Professional Component (CPC) topical areas that should be adequately covered within the content of undergraduate sport management degree programs. Experiential learning is now encompassed in the integrative experience CPC, which includes three options. First, a strategic management or policy class is required. Next, an internship experience can be offered. Finally, a capstone experience, such as a thesis, project, or comprehensive examination that enables a student to demonstrate applied knowledge, can be used to meet this CPC. This new standard represents a significant change from the SMPRC standards that required a student to complete an internship experience and further defined what constituted an acceptable internship regarding hours and supervision. Per the new standards, a college or university can elect to offer a capstone experience or comprehensive exam to demonstrate an integrative experience; as a result, the sport management internship is no longer required for program accreditation.

IV. LEGAL ISSUES IN SPORT MANAGEMENT INTERNSHIPS

The shift in accreditation standards concerning internships should not diminish the value of this experiential experience; however, the change does potentially place greater focus on the decision of whether a college or university should include a sport management internship as part of the required curriculum. Other considerations that may impact the decision of whether to require an internship are the many legal issues that are present when students participate in internships. Much research has been done to date regarding various legal concerns that may be encountered by the student intern, the sport management program, and the host organization involved in

29. Id.
30. Id.
31. Id.
sport management internships. 32

A. Tort Liability

One primary area of concern is liability for injuries to persons or property caused by or inflicted upon the student intern. In Nova Southeastern University v. Gross, the Florida Supreme Court discussed whether a university could bear liability for a student who was assaulted while participating in a required internship placement. 33 The court held that a university may be liable for injuries to the student during an internship if the college or sport management program controlled the site selection or placement opportunities for the student. 34 Specifically, the court stated that the university required the student to do the internship, assigned her specific location, and had sufficient control over her activities, thus imposing a duty of care on the university. 35 Foster and Moorman looked closely at Gross in their discussion of internships and negligence liability and made recommendations based upon the Florida court’s holding. 36 The study closely examined university liability for injuries to student interns caused by third parties and concluded that, because many internship sites may be located in unsafe areas, sport management programs should take steps to protect the student from an “unreasonable risk of harm.” 37 Research into the internship location, evaluation forms from previous internships at the site specifically requesting information about unsafe or dangerous conditions, and a signed waiver or assumption of risk to protect the university and faculty are mentioned as possible solutions. 38

The level of involvement by the university regarding the internship placement is also determinative regarding the duty of care. Conrad and


34. Id. at 89.

35. Id.


37. Id.

38. Id. at 260–62.
Salgado conclude that, if the school merely posts internship opportunities, it does not create a student-employer relationship and has no control over the workplace, then it is unlikely that a "duty of care" would exist for the college or sport management program. The more involved the sport management program, internship coordinator, or college becomes in the internship-selection process, the more likely a "duty of care" would exist, which might lead to an increased liability risk.

B. Workplace Harassment and Discrimination Concerns

In addition to the college, university, or sport management program facing potential tort liability, sport management internships present additional legal concerns for other parties to the internship, in particular the student intern. Specifically, the ambiguous nature of the law regarding internships results in a lack of protection against workplace harassment and discrimination. A student in an unpaid internship will not be afforded protections against discrimination under Title VII of the Civil Rights Act of 1964 based primarily on the unpaid status. Given that most interns hold low positions within an organization hierarchy, they may be particularly susceptible to harassing or discriminatory conduct, yet have no legal recourse. Consider the ruling in *O'Connor v. Davis*. Bridget O'Connor, a student at Marymount College, completed a 200-hour internship at a local psychiatric center; the internship was required by her social work degree program. Over the course of her internship, O'Connor was subject to repeated sexual harassment by her supervisor. Her complaints at the internship site resulted in Marymount being notified and her internship placement being changed; however, she subsequently filed a harassment claim under Title VII. The district court dismissed her complaint because, as an unpaid intern, she was

40. Id. at 2.
44. Policy Memorandum, *supra* note 42, at 3.
45. Id.; Bowman & Lipp, *supra* note 32.
46. O'Connor v. Davis, 126 F.3d 112 (2d Cir. 1997).
47. Id. at 113.
48. Id. at 113–14.
49. Id. at 114.
not an employee and thus not entitled to Title VII protections. This dismissal was later affirmed by the U.S. Court of Appeals. This lack of protection for unpaid interns is still the legal standard and was affirmed as recently as 2006. While O'Connor is not specific to a sport management student, the legal standard is the same—students who work as unpaid interns are not afforded legal protections against workplace harassment.

Regarding workplace discrimination, sport management programs, as well as host organizations, need to be cognizant of required practices under the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Providing a disabled student with an internship opportunity often results in multiple legal considerations regarding reasonable accommodation. First, sport management programs cannot eliminate the internship requirement for students with disabilities—to do so may be an unreasonable accommodation under the law. Additionally, if an internship is for academic credit, the university is responsible for providing reasonable accommodations to the student, even if the internship is conducted off college or university grounds. Further, the host organizations must hire interns in accordance with Equal Employment Opportunity Commission guidelines, making sure to use non-discriminatory hiring practices. Barnes specifically explored the legal issues surrounding internships for students with disabilities. Barnes found that, because many disabled students have limited work experience, they do not know what accommodations they will need. Thus, in order to best prepare the disabled student in the work environment and comply with federal law, each student's needs must be evaluated on a case-by-case basis. While there is no guiding case law specific to sport

50. Id.
51. Id. at 113, 119.
52. See Lowery v. Klemm, 845 N.E.2d 1124 (Mass. 2006). It should be noted that the appellate court in this case did find in favor of the intern, extending a state anti-harassment law to unpaid interns. Id. at 1070-071 (Mass. App. Ct. 2005). However, the Supreme Judicial Court of Massachusetts overturned that extension, keeping intact the precedent that unpaid interns do not qualify for the same discrimination and harassment protections afforded traditional employees. Id. at 1131.
54. Id. at 195–96.
55. Id. at 196 (citing Lori W. Briel & Elizabeth Evans Getzel, Internships in Higher Education: Promoting Success for Students with Disabilities, 21 DISABILITY STUD. Q. 1 (2001)).
57. Id.
58. Id. at 192–93.
59. Id. at 196.
Internships in Sport Management, the internship coordinator and on-site supervisor need to understand the legal requirements and practical issues of the work setting in order to create the reasonable accommodations needed by the disabled student intern. Both the sport management program and the host organization need to be aware of the complexities present in disability law as to avoid legal consequences.

C. Labor Law Implications

An emerging area of legal concern with the potential for significant consequence is host organization liability under the FLSA. In 1938, the federal government enacted the FLSA to establish a minimum wage and to protect workers from exploitation. Currently, all companies in both the public and private sector that participate in interstate commerce and that meet or exceed $500,000 in annual sales must comply with the FLSA. Additionally, certain organizations, such as colleges and universities, must also comply regardless of annual revenue. While there are some sport organizations that may qualify for FLSA exempt status using the “seasonal or recreational” exemption, the vast majority of organizations serving as host organizations for sport management interns are required to comply with FLSA standards; as such, host organizations should be aware of the legal issues that may result from hiring and deriving a benefit from unpaid interns.

The FLSA requires that all employees receive at least minimum wage and overtime in exchange for work performed. However, are sport management interns classified as employees under the FLSA? Relying on Walling v. Portland Terminal Co., the U.S. Department of Labor (DOL) established six standards to determine if an intern should be considered an employee for purposes of the FLSA. The standards are (1) the training of the intern includes actual hands-on experience with equipment or processes used in the

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60. Id. at 197-99.
62. § 203(s)(1)(A).
63. § 203(s)(1)(B).
64. Certain professional baseball teams have exempt status from FLSA provisions regarding overtime pay based on the seasonal or recreational establishment exemption. See Adams v. Detroit Tigers, Inc., 961 F. Supp. 176 (E.D. Mich. 1997); Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590 (11th Cir. 1995). In contrast, the Cincinnati Reds did not qualify for this same exemption. Bridewell v. Cincinnati Reds, 155 F.3d 828, 830 (6th Cir. 1998).
65. See Coker, supra note 32, at 35.
68. U.S. DEPT. OF LABOR, WAGE & HOUR DIV., FIELD OPERATIONS HANDBOOK § 10(b)(11).
industry; (2) the training is for the benefit of the intern, not the employer; (3) the intern does not displace a regular, paid employee and works under close supervision of the employer; (4) the employer that provides the training derives no immediate advantage from the activities of the intern and on occasion the employer’s operations may actually be impeded; (5) the intern is not entitled to a job at the completion of the internship; and (6) the employer and intern understand that the internship is unpaid.69

According to the DOL, all six requirements for exemption must be satisfied; if not, an intern will qualify as a covered employee under the FLSA, thus requiring receipt of minimum wage and overtime payments.70 Per the DOL, “‘internships in the ‘for-profit’ private sector will most often be viewed as employment, unless the [six-part] test . . . is met.’”71 While some of these criteria are straightforward, others are subjective and thus open to interpretation. Unfortunately, there is no direct case law that specifically applies the Portland Terminal test to unpaid interns; hence, no concrete determination can be made regarding their legal status. However, the DOL does provide guidance regarding internship status in the form of opinion letters,72 and clarification of the six criteria is set forth below.

69. Id.; see also LINDA SHARP, ET AL., SPORT LAW: A MANAGERIAL APPROACH 286 (2007).
71. Id.
72. U.S. Dept. of Labor Opinion Letter FLSA2004-5NA, May 17, 2004, at 2, available at http://www.dol.gov/whd/opinion/FLSANA/2004/2004_05_17_05FLSANA_internship.htm. The DOL Wage and Hour Division provides guidance via opinion letters; the letters are responses to inquiries regarding the legal status of a specific internship program. In one such letter, the DOL discusses application of the six criteria to an internship program in which the student receives college credit for the internship. As explained in the letter, reaching conclusions on certain of the six criteria is difficult. The letter reads:

According to the information submitted, it is not clear that each of the six criteria . . . is satisfied. The internship program satisfies the first criteria. The company’s training program is similar to that which would be given in a [vocational] school. The internship involves the students in real life situations and provides them with an educational experience that they could not obtain in the classroom, which generally is related to their course of study. The program also appears to satisfy the second criteria. The internship inures to the benefit of the students, who receive college credit for performing the internship, although it is not a required program. You have not provided sufficient information for us to determine whether the internship program satisfies the third and fourth criteria, however. While it does not appear likely that the student interns displace regular employees, since they work a maximum of 10 hours per week, they are “expected to assume the role of regular staff members of the company.” You did not describe how closely the students are supervised and whether at any time the company’s operations are impeded by virtue of the internship program. We also do not know whether the employer may derive an immediate benefit from the activities of the students, who analyze trends
Specifically, the DOL provides the following information to clarify each of the six required criteria: (1) the more closely an internship experience is modeled around an academic or classroom experience, for example, if academic credit is received, the more likely the internship will be viewed as an extension of the classroom and not categorized as employment;\(^7\) (2) the internship benefits the intern when assigned tasks provide general, transferable skill sets, as opposed to host organization specific knowledge;\(^7\) (3) if an employer uses interns to augment its workforce or substitute for regular employees during specific time periods, the interns should be classified as employees;\(^7\) (4) if the host organization is not dependent on the work of the intern or if the intern does not perform routine work of the host organization on a regular and recurring basis, the intern should not be classified as an employee; however, if interns are engaged in the host organization’s operations or are performing productive work, classification as employees is likely;\(^7\) (5) if the internship is for a fixed duration of time, established prior to commencement of the internship with no expectation of employment beyond the established internship timeframe, classification as an employee is unlikely;\(^7\) and (6) documentation of mutual agreement regarding lack of wages typically satisfies the non-compensation criterion.\(^7\)

The most difficult consideration when analyzing the six Portland Terminal criteria is determining the primary beneficiary of the internship experience, as required by the fourth criterion. Many sport organizations incorrectly assume that requiring an intern to receive academic credit for the internship makes the intern the primary beneficiary. Almost 60% (57.9%) of employers that use unpaid interns require proof of academic credit as part of the internship opportunity.\(^7\) While this condition may strengthen the argument that the academic credit creates an experience similar to that inside a

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\(^7\) U.S. Dept. of Labor, supra note 70.
\(^7\) Id.
\(^7\) Id.
\(^7\) Id.
\(^7\) Id.
\(^7\) Id.
\(^7\) Id.
\(^7\) Id.
\(^7\) NACE Membership Survey, supra note 8, at 2.
classroom, the argument cannot be solely relied upon. The DOL is quite clear in stating that all six Portland Terminal criteria must be met; thus, if the student intern’s activities benefit the host organization to the extent that the academic credit is outweighed, the sport organization may become the primary beneficiary. Through both opinion letters and position statements, the DOL has made clear that “the only acceptable activities for unpaid interns are those that are purely for teaching purposes and do not help with [a host organization’s] day-to-day tasks.”

If a host organization derives an immediate advantage or benefit from the work of the intern, the intern should be classified as an employee; however, if the greatest benefit of the internship (perhaps the academic credit) is realized by the student rather than by the host organization, there is no need for the intern to be paid.

While evidence supports that sport management interns are regularly engaged in activities that benefit the host organization, the question may not have such a clear answer. In a 2010 NACE survey, nearly two-thirds of college interns disagreed (19.8% strongly disagreed) and 52.8% of employers disagreed (11.3% strongly disagreed) with the statement. Moreover, only 19.3% (7.5% strongly) of interns and 24.5% (9.9% strongly) of employers believe the employer derives an immediate advantage from the internship. Although this survey was not specific to the sport industry, the conclusions can likely be applied to sport management internships.

Consider the following: Internship descriptions often list the specific tasks an intern will complete during the internship experience. For example, in an August 2010 internship applicant posting, the National Basketball Association’s (NBA) Miami Heat stated the hired (and unpaid) intern would have the following responsibilities: execute in-game promotions; assist in execution of grassroots events and other Heat non-game events; assist in creation of campaigns and new grassroots opportunities; work directly with Hoop Troop, HEAT Street Band, and other marketing assets; assemble and prepare media kits (as needed, surrounding media campaigns throughout the season); assist with researching and contacting new clients to market talent to;
and assist with the talent booking process.\textsuperscript{86} This is just one example of several hundred sport organizations wishing to hire interns to engage in activities that benefit the organization.\textsuperscript{87} The Miami Heat does require the successful applicant to receive college credit for the internship experience; however, as stated, requiring college credit is not sufficient to establish the student intern as the primary beneficiary of the internship.\textsuperscript{88}

Many sport organizations solicit interns to provide benefit to the organization; this practice is common and is essential if sport management programs continue to require internships as part of the curriculum. Without the multitude of sport management internship opportunities, students would have a very difficult time finding internship placements. However, these internships may not be in the best interest of the host organizations.

V. FLSA VIOLATIONS: AN EMERGING AREA OF CONCERN

According to officials at the DOL, the number of unpaid internships has increased in recent years. In 2008, NACE found that 50\% of graduating students participated in an internship, a significant increase from 17\% in 1992.\textsuperscript{89} Further, \textquotedblleft[e]mployers posted 643 unpaid internships on Stanford’s job board\textquotedblright in the 2009–10 academic year; 174 were posted in 2007–08.\textsuperscript{90} Some experts estimate that of the hundreds of thousands of student internships held each year, one-fourth to one-half are unpaid.\textsuperscript{91} These increases and statistics have led to concern by federal and state regulators that employers are inappropriately using unpaid interns as free labor.\textsuperscript{92} M. Patricia Smith, the federal Labor Department’s top law enforcement official, is stepping up enforcement nationwide.\textsuperscript{93} Also, officials in Oregon, California, and other states have begun investigations and fined employers after becoming convinced that many unpaid internships violate minimum

\begin{thebibliography}{99}
\bibitem{88} U.S. Dept. of Labor Opinion Letter, \textit{supra} note 72.
\bibitem{90} \textit{Id}.
\bibitem{91} \textit{Id}.
\bibitem{93} Greenhouse, \textit{supra} note 89.
\end{thebibliography}
wage laws. Additionally, the DOL is planning to crack down on organizations using unpaid interns inappropriately, as well as educate organizations, colleges and universities, and students on the law regarding internships. Nancy J. Leppink, the acting director of the DOL’s wage and hour division, stated, “[i]f you’re a for-profit employer or you want to pursue an internship with a for-profit employer, there aren’t going to be many circumstances where you can have an internship and not be paid and still be in compliance with the law.”

While none of the current concern is specifically targeted at organizations facilitating sport management interns, these host organizations have cause for concern. Any employer that violates FLSA minimum wage standards may be liable for unpaid wages, compensatory damages, and additional liquidated damages. While there is little incentive for an employer or a student intern to report a violation, wrongdoing could potentially be discovered through a federal or state investigation. A simple search of internship availability postings makes clear that sport organizations are seeking to hire sport management students to perform tasks otherwise performed by employees and that benefit the organization, potentially in violation of the FLSA.

However, some argue that the basis of the current scrutiny is flawed. The *Portland Terminal* criteria were established in 1947 when many apprenticeships were for blue-collar production work; these criteria do not account for the diversity of internship experiences available today. Specifically, NACE developed a position statement concerning unpaid internship practices. The statement reads:

The National Association of Colleges and Employers

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94. *Id.* Also, California is an example of a state that has guidelines beyond the DOL and six *Portland Terminal* criteria. Specifically, the Division of Labor Standards Enforcement (DLSE) within the California Department of Industrial Relations states that employers should follow several additional requirements: (1) the training should be part of an educational curriculum; (2) the students should not be treated as employees for such purposes as receiving benefits; (3) the training should be general in nature, so as to qualify the students for work for any employer, rather than designed specifically as preparation for work at the employer offering the program; (4) the screening process for the program should not be the same as for employment; and (5) advertisements for the program should be couched in terms of education rather than employment. See generally, Cal. Div. of Labor Standards Enforcement, Opn. Ltrs. 1998.11.12 and 1996.121.30, available at www.dir.ca.gov/dlse/DLSE_OpinionLetters.htm.

95. *Greenhouse, supra* note 89.

96. *Id.*


(NACE), representing more than 3,000 higher education institutions and employing organizations, recognizes the enormous value of internship programs to individual student participants and both the higher education and employer communities. We believe that the U.S. Department of Labor criteria for assessing whether internships in the for-profit sector may be unpaid must be reviewed and further clarified to ensure they account for the incredible diversity of students, higher education institutions, and employing organizations involved in such programs. Further, all interns, regardless of their compensation, should enjoy similar, basic protections in the work setting consistent with all laws, ethical considerations, and sound business practices.

Clearly, NACE supports the continued use of internships to promote student learning and success. However, absent case law that specifically applies the Portland Terminal criteria to unpaid interns, or a modification of said criteria by the DOL, current and continuing scrutiny may force organizations to discontinue internship opportunities. The current economic downturn may force organizations to continue using the internship model for the duration of the economic crisis, but ultimately, the potential legal liability associated with maintaining interns may far outweigh the benefit.

VI. FUTURE IMPLICATIONS TO CURRICULA / ACCREDITATION REQUIREMENTS

"[T]he threat of increased regulation [by the DOL] could have a...[significant] effect on the willingness of employers to offer internships."101 Sport organizations might offer fewer internship opportunities, choosing not to expose themselves to the risk of a lawsuit for violating FLSA laws. Joseph Aoun clarifies the apparent dichotomy inherent with the DOL standards.102 Because the standards allow little benefit from the internship to the host organization and might impede its business operations, many host organizations might minimize the experience for the intern.103 He explains that the "[r]ules that encourage student interns to perform 'no or minimal work' are antithetical to the premise of experiential learning. Under these rules, internships...would deteriorate into job shadowing, a pale imitation of

101. Aoun, supra note 1, at 1.
102. Id.
103. Id.
true experiential learning.”

Another dichotomy is also present in the new COSMA accreditation standards—experiential learning through internships is of significant value to a student; however, the standards no longer require that a sport management program require an internship experience. Rather, sport management programs can fulfill the Integrative Experience CPC by requiring a capstone course or comprehensive exam. Given the complexity of the potential FLSA impact on host organizations, sport management programs seeking new or re-accreditation under the COSMA standards should consider an alternate experiential learning opportunity for students. Required internships have become the norm in sport management programs, and a departure from this accepted practice may seem controversial. However, the potential costs associated with requiring an internship may now seem to outweigh the benefits. Colleges and universities, as well as host organizations, could face liability under tort or discrimination law. Further, unpaid student interns do not receive legal protection from harassment in the workplace. And while the college or university or sport management program cannot incur direct liability if a partner host organization violates the FLSA, the host organization is particularly susceptible. Also, the internship coordinator would certainly be aware of the tasks performed by the intern and whether the host organization was potentially violating the FLSA. While the internship coordinator would bear no legal responsibility to report the violation, ethically, he or she may be inclined to do so. Required sport management internships potentially expose all parties involved to legal or ethical challenges and should be reconsidered.

VII. CONCLUSION

Experiential learning through internships has been at the core of college and university sport management programs since their inception. As noted, internships provide a student with a valuable learning opportunity not found in other classroom or educational settings. However, over time and after analysis, many legal issues regarding these internships have come to light. Whether the focus is tort liability, harassment, discrimination law, or the most recent FLSA scrutiny, sport management internships present complex legal challenges. While experiential learning opportunities should remain present in sport management programs, requiring students to complete an internship that subjects the intern, college or university, and host organization to liability may not be wise. While experiential learning opportunities that are completely void of legal risk may not exist, many internships pose risks that may
outweigh the benefits. Although eliminating internships from sport management programs represents a significant departure from the norm, the COSMA standards support the shift. Internships are no longer required; experiential learning can be achieved in other ways. From a liability perspective, exploring these other methods is in the best interest of college and university sport management programs.