

Labor Law Information

UNPAID INTERNSHIPS AND THE LAW:

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Paid vs. Unpaid Internships & DOL's Six-Part Test

Whenever possible, it is always best to pay an intern in compliance with applicable state law and the Fair Labor Standards Act ("FLSA"), which requires payment of a minimum wage plus an overtime premium if the individual works more than 40 hours per workweek and is not exempt from the maximum hours requirement of the FLSA. Paying an intern shows an investment in their learning and recognizes the contribution they will make to the organization. Also, most college students cannot afford to spend 10-20 hours per week in an unpaid position. Indeed, even if an internship is for credit, the student will still be required to pay tuition. You will increase your internship candidate pool if you provide some compensation for their time.

DOL's Wage and Hour Division issued a six-part test to guide the determination of whether a trainee (intern) is in fact an employee under the FLSA. If the intern is an employee, then the employer must pay the intern a wage for the time worked. If your organization is not able to find the money in your budget to pay the intern?regardless of whether the student earns college credit during the internship, you must follow the Fair Labor Standards Act which states, in a six-part test, the criteria that must be met by an employer if the intern is to be unpaid.

The test, in relevant part, states: "Whether trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer." If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act and, therefore, do not have to be paid:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees or students.
3. The trainees or students do not displace regular employees, but work under their close observation.
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion, his operations may actually be impeded.
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the trainees or students understand that the trainees are not entitled to wages for the time spent in training. (See Wage & Hour Manual (BNA) (1975).)

According to DOL, each of these six criteria must be met. Therefore, it is important to create a job description that clearly outlines expectations and duties, duration of the internship (including specifying an end date) and confirming whether or not a wage and/or credit will be offered.

Regardless of whether they are also earning college credit, if an intern receives a wage, then the intern is considered an employee of the employer and meeting the standards set forth in DOL's six part test is not required. However, if an intern does not receive a wage, regardless of whether they earn college credit, they are considered trainees or students—not employees—and must meet the standards set forth in DOL's six part test. Again, consult an attorney specializing in employment law for clarification on the implications an internship might have on your business.

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