**Internship Programs (version 3-7-17)**

**Background**

The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.”  Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer.  Internships will most often be viewed as employment, unless the test described below relating to trainees is met.  Interns who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.[\*](https://www.dol.gov/whd/regs/compliance/whdfs71.htm%22%20%5Cl%20%22_edn1%22%20%5Co%20%22)

**The Test for Unpaid Interns**

Individuals who participate in internships or training programs may do so without compensation, where they receive training for their own educational benefit under five general criteria:

1. The internship, even though it includes actual operation or tactical work for the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, and works under close supervision of existing staff;
4. The intern is not necessarily entitled to a job at the conclusion of the internship; and
5. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship (see attached draft agreement drafts).

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act’s minimum wage and overtime provisions do not apply to the intern.

**The Primary Beneficiary of the Activity**

Additional Internship guidelines:

* In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer’s actual operations, the more likely the internship will be viewed as an extension of the individual’s educational experience (See attached draft agreement, where a college or university exercises oversight over the internship program and provides educational credit).
* The more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer’s operation, the more likely the intern would be viewed as receiving training.   (1)

**When an Internship isn’t one:**

* If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods, these interns should be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.
* If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled compensation under the FLSA.
* If the intern receives the same level of supervision as the employer’s regular workforce, this would suggest an employment relationship, rather than training.

**Length of Internship**

The internship should be of a fixed duration, established prior to the outset of the internship.  Further, unpaid internships generally should not be used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period: that individual generally would be considered an employee under the FLSA.

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1. *Under these circumstances the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the work of the intern.  On the other hand, if the interns are engaged in the operations of the employer or are performing productive work (for example, filing, performing other clerical work, or assisting customers), then the fact that they may be receiving some benefits in the form of a new skill or improved work habits will not exclude them from the FLSA’s minimum wage and overtime requirements because the employer benefits from the interns’ work.*