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SMALL BUSINESS SERVICES

Interns: ‘Do I Have to Pay Them?’ and Other FAQs



Interns across the country will be joining the workplace this summer to learn new skills and apply what they’ve learned in the classroom. When they do, questions about how to structure the program, whether the intern is entitled to pay, and what records are needed to document the relationship often arise. In this Tip, we answer common questions about internships.

INTERNS: ‘DO I HAVE TO PAY THEM?’ AND OTHER FAQs

Both employers and college students have had a growing interest in internships. The relationship offers a unique opportunity for students to learn vital skills and for a business to evaluate potential hires. However, for employers, internships often raise questions, particularly related to pay. Below we provide answers to some of the most frequently asked questions about interns:

Q: My company has 10 employees and wants to use interns this summer. Do we have to pay them?

A: Unless very narrow tests are satisfied, generally all employers regardless of size must pay interns at least the minimum wage and overtime in accordance with the Fair Labor Standards Act (FLSA). The DOL uses a six-part test to determine whether an intern must be paid under the FLSA. The test requires all six criteria to be fulfilled for the internship to be unpaid.

Q: What is the six-part DOL test?

A: The DOL’s test* is as follows (**Note:** All six factors must be met for the internship to be unpaid):

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment. 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. To help satisfy this requirement, employers typically work closely with a university that provides oversight to the internship program and offers college credit for successful completion of the internship.

2. The internship experience is for the benefit of the intern.

Under this criterion, the internship should provide skills that can be used in multiple employment settings. Unpaid interns should not perform productive or routine work or assignments that an employee would normally perform.

3. The intern does not displace regular employees but works under close supervision of existing staff. Employers cannot use unpaid interns as substitutes for regular workers or to augment their existing workforce. If you are dependent upon the work of an intern, or would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the DOL will view the interns as being entitled to compensation.

4. The employer derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded. The objective of an unpaid internship should be to provide a meaningful learning experience in the intern’s area of study. Any work done by an unpaid intern should be insubstantial in nature and secondary to the training process.

5. The intern is not necessarily entitled to a job at the conclusion of the internship. Unpaid internships should not be used as a trial period. Both parties should understand that the internship is temporary and that there should be no expectation of employment at the conclusion of the internship.

6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship. Under this criterion, both parties must understand that the internship is unpaid.

Very few internships will meet the six criteria outlined above. Evaluate each situation on a case-by-case basis and when in doubt, pay interns at least the minimum wage and overtime when due.

*** Note:** These six criteria apply to for-profit employers only.

Q: Does my state have its own test for determining whether an intern must be paid?

A: In addition to the DOL test, some states along with some federal courts have their own tests to determine whether an intern is entitled to pay, so it is important to understand the tests that apply in your jurisdiction. Employers should consider working with legal counsel when making this determination.

Q: I believe my internship program meets the DOL six-factor test as well as my state's test. What should I do now?

A: Employers that wish to create an unpaid internship program should formalize the internship relationship in writing to show that each factor is met. This should be signed by the intern and should contain an acknowledgement that the internship is unpaid, is for the intern's educational benefit and will not necessarily result in a job offer at the conclusion of the internship.

Q: My internship relationship doesn't meet the DOL's test. Can I give my intern a stipend rather than pay?

A: No, if an internship doesn't meet the six-part test, the intern must receive at least the minimum wage for each hour worked and receive overtime pay any time he or she works more than 40 hours in a workweek, according to the Department of Labor.

Q: A college student came to me and asked to be an unpaid intern to get her "foot in the door." Can I offer her an unpaid internship?

A: Again, if the six-part test is not met, the individual is entitled to compensation. An individual cannot waive his or her right to compensation.

Q: Do I have to fill out an I-9 form for interns?

A: In general, a [Form I-9 \(Employment Eligibility Verification\)](#) is not required for a bona fide unpaid intern. However, if you provide an intern with anything of value in exchange for their work, such as pay, meals or lodging, an I-9 form must be completed. As a reminder, the United States Citizenship and Immigration Services (USCIS) recently published a new version of the I-9 form, which employers are required to use for all new hires on or after May 7, 2013.

Q: Would an intern be entitled to workers' compensation if they are injured while at my company?

A: In general, it will depend on the definition of "employee" under your state's workers' compensation law and the specific facts of the case. It is recommended that employers consult legal counsel to determine the applicability of workers' compensation laws to interns in their state.

Q: Will interns be entitled to unemployment benefits after they complete the internship?

A: In general, the typical student intern is unlikely to meet eligibility requirements for unemployment compensation, but employers should check the specific eligibility rules under their state law.

Q: May I classify an intern as an independent contractor?

A: No, the typical intern would not meet the very narrow tests for classifying an individual as an independent contractor. Generally, independent contractors perform specialized work, are self-employed in an independent trade, business, or profession, and offer their services to the general public under a contract or agreement. There are additional tests used by the Internal Revenue Service (IRS) as well as other federal, state and local agencies for determining whether an individual is an independent contractor. Employers should review these tests carefully and consult legal counsel as needed.

Q: May I apply my company's dress code to interns?

A: Yes, employers may apply their dress code, and other policies governing standards of conduct, to interns the same way they do employees.

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