

# Internships: Tips for Employers on Starting an Internship Program

Over the past several years the use of internships as part of the recruitment process has increased tremendously. Employers report that interns are the best source of new full-time employees, according to recent NACE surveys.

While internships come in many shapes and sizes, one of the common questions asked by employers developing internship programs is whether the employer must pay an intern for his/her work. The answer to this lies in an analysis of the on-the-job experience the individual will have in relationship to the standards set forth under the Fair Labor Standards Act, which requires employers to pay at least the minimum wage to employees.

Pursuant to this law, the U.S. Department of Labor (DOL) has developed six criteria for identifying a learner/trainee who may be unpaid. Neither the law nor the regulatory guidance uses the term "intern."

The criteria are:

1. The training, even though it includes actual operation of the employer's facilities, is similar to training that would be given in a vocational school.
2. The training is for the benefit of the student.
3. The student does not displace regular employees, but works under the close observation of a regular employee.
4. The employer provides the training and derives no immediate advantage from the activities of the student. Occasionally, the operations may actually be impeded by the training.
5. The student is not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the student understand that the student is not entitled to wages for the time spent training.

While not all six factors have to be present for an individual to be considered a trainee, the experience should ultimately look more like a training/learning experience than a job. This raises the issue of the fourth criterion—that the employer derives no benefit from the student's activities. This seems to fly in the face of contemporary practice. In the same way that a student working in a college laboratory is expected to become actively involved in the work at hand, an intern is expected to participate in the work of the company to make the experience educationally valid. Several DOL rulings, while not addressing the criteria head on, seem to suggest that as long as the internship is a prescribed part of the curriculum and is predominantly for the benefit of the student, the mere fact that the employer receives some benefit from the student's services does not make the student an employee for purposes of wage and hour law.

Other criteria that have been questioned are the payment of wages and the expectation of a job after graduation. In many cases, the employer pays a stipend to students for their meals and lodging or to assist with tuition. This is not considered payment of wages for the purpose of determining whether a student is an employee. Likewise, the fact that the employer may ultimately hire the student does not make the intern an employee as long as there was no promise of a regular full-time job made to the intern prior to or during his/her internship.

Following are some points that generally hold true for meeting "trainee" criteria:

1. The work is an integral part of the student's course of study.
2. The student will receive credit for the work or the work is required for graduation.
3. The student must prepare a report of his/her experience and submit it to a faculty supervisor.
4. The employer has received a letter or some other form of written documentation from the school stating that it sponsors or approves the internship and that the internship is educationally relevant.
5. Learning objectives are clearly identified.
6. The student does not perform work that other employees perform.
7. The student is in a shadowing/learning mode.
8. The employer provides an opportunity for the student to learn a skill, process, or other business function or to learn how to operate equipment.
9. There is educational value to the work performed, i.e. is it related to the courses the student is taking in school.
10. The student is supervised by a staff member.
11. The student does not provide benefit to the employer more than 50 percent of the time.
12. The employer did not guarantee a job to the student upon completion of the training or completion of schooling.

Can the unpaid intern be considered a volunteer for the employer? DOL regulations define "volunteer" as an individual who provides services to a public agency for civic, charitable, or humanitarian reasons without promise or expectation of compensation for services rendered. Most business internships would not fit within the definition of volunteer.

A final issue is whether an unpaid intern who is an international student must claim this time as practical training time since it is unpaid. Some NACE members have suggested that if international interns are not paid, then their internships are not practical training and they do not have to claim the internships as part of their allowed 12 months of practical training time. Another suggestion is that if the training is unpaid, students do not have to seek authorization from the U.S. Immigration & Naturalization Service (INS).

The practical training regulations do not speak to the question of paid or unpaid practical training. The answer is unclear at best. The employer still has to comply with the Fair Labor Standards Act before determining whether he/she should pay the intern. Also,

immigration law states that if a foreign student is found to be "out of status," which could include working in practical training without the appropriate authorization, the student may be barred from re-entry into the United States for a period of five years. Thus, an employer should seek legal counsel from an immigration expert before agreeing to permit an international student to participate in an unpaid internship without receiving appropriate INS work authorization approval.

Source:

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