

## Is Your Internship Program In Compliance With The Fair Labor Standards Act (FLSA)?

During college, I interned with a governmental agency with several goals in mind. I wanted to jumpstart my career by getting my 'foot in the door' thus building a relationship with a potential future employer, gain professional development, and secure a competitive edge amongst my fellow classmates that did not intern. According to the [Academic Internship Office Website of Pacific Lutheran University](#), employer benefits of having a quality ongoing internship program include:

1. Fulfilling a civic and professional responsibility by providing students with real work experience.
2. Increasing diversity.
3. Providing an opportunity for supervisory experience for developing employees.
4. Ensuring a cost effective way to recruit highly qualified and motivated students to meet company needs.

Fortunately my internship experience was positive. I was paid above minimum wage, never assigned menial or degrading tasks, and was surrounded by mentoring supervisors and coworkers that cared about my future. This is not the case for a lot of college students in 2010. With the current global economic downturn, many employers have drastically reduced or eliminated stipends and/or paid internships to meet their budgetary bottom line. Unpaid internships are now commonplace. Consequently, the U.S. Department of Labor (DOL) Wage and Hour Division (WHD) received an increased number of complaints that employers are taking advantage of this 'free labor' pool. The DOL is cracking down on this problem and has issued guidelines for employers to use.

The DOL applies six criteria, taken from the US Supreme Court case, *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947), to help determine whether interns must be paid the minimum wage and overtime under the Fair Labor Standards Act (FLSA) for the services that they provide to "for-profit" private sector employers. Those are:

1. The internship, even though it includes actual operation of the facilities of 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, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the criteria listed above are met, then the worker is a "trainee/intern", an employment relationship does not exist under the FLSA, and the FLSA's minimum wage and overtime provisions do not apply to the worker.

## **Criteria One & Two: Educational Environment & Primary Beneficiary of the Activity**

In general, the more the 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. For example, where the college or university has oversight over the intern such as offering academic credit and/or where the student writes reports or journals of his/her experience to the college, the DOL is likely to find an internship.

## **Criteria Three & Four: Displacement and Supervision Issues**

The employer must not use interns to substitute for regular workers, or augment its existing workforce during specific time periods, unless the intern is paid at least minimum wage and overtime compensations for hours worked over forty in a workweek. Where the intern does minimal work, and there is close supervision similar to job shadowing and mentoring, the DOL is mostly to find an internship.

## **Criteria Five & Six: Job & Wage Entitlement**

At the outset, the employer should openly communicate to the intern that the internship is for a fixed duration, there is no trial period of employment, and/or there is no offer to the intern that she or he will be hired on a permanent basis at the conclusion of the internship. Conversely, if an intern is placed with the employer for a trial period with the expectation that he or she will then be hired on a permanent basis, that individual would be considered an employee under the FLSA.

To make sure your internship program is in compliance, seek the help of a local certified Human Resource Professional and/or Employment Attorney, as each State may have additional protections for its citizens.

The criteria state above was summarized from the [DOL Wage and Hour Division Website](#): Their toll-free information and helpline is 1-866-4USWAGE (1-866-487-9243).

### **Disclaimer**

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