

# Wage & Hour Insights

Guidance & Solutions for Employers



## Simply Calling A Job An Unpaid Internship Does Not Make It So

By [Staci Ketay Rotman](#) on June 06, 2011



As summer break is about to begin, there is a [significant decrease in the number of paid summer jobs](#) available for [students](#). As an alternative, there are a number of students hoping to land internships in the private sector. Given the number of students vying for these positions and the country's continued slow economic recovery, many companies are considering offering **unpaid** internships. However, simply because the student is willing to work for free does not necessarily mean that the company can do so without violating the Fair Labor Standards Act (FLSA) and related state wage and hour statutes.

Last year, the Department of Labor (DOL) issued a fact sheet providing general information to help determine whether interns must be paid for their services under the FLSA. Whether the FLSA applies to an internship depends on whether there is an employment relationship between the intern and the company. The FLSA defines the term "employ" very broadly and internships in the private sector will most often be viewed as employment unless the work is for the benefit of the intern. And if the interns qualify as employees, they must be paid at least the minimum wage and overtime compensation for hours worked over 40 in a work week.

In order to make this determination, the DOL applies a [six factor test](#) with particular focus on the work environment, primary beneficiary of the activity, displacement of employees, supervision and job entitlement. While helpful, the DOL does not require that a student receive academic credit to keep the internship from following under the auspices of the FLSA.

If you do choose to hire an intern on an unpaid basis, best practices dictate that the intern and employer have a written communication that outlines the learning objectives of the internship, the type of training provided and the fact that the internship is unpaid.

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