



Unpaid Internship Guidelines **Interns Must be Primary Beneficiary of Internship**

Any for-profit employer looking to hire unpaid interns this summer (or beyond) should review the U.S. Department of Labor's ([DOL](#)) new [fact sheet](#) on internship programs. DOL's new fact sheet replaces an older version that used a six factor test, all of which had to be met for an intern not to be considered an employee.

According to DOL, an employee must be paid for his/her work under the Fair Labor Standards Act ([FLSA](#)); however, an intern might not qualify as an employee under the FLSA.

To determine if an intern should really be classified as a paid employee, DOL's fact sheet points to seven factors to determine if the intern or the employer is the "primary beneficiary" of the internship.

In deciding whether the intern or the employer is the primary beneficiary, federal courts will analyze the economic realities of the intern's relationship with the employer to evaluate whether the internship is primarily for the employer's economic benefit, or for the intern's educational benefit. If the employer is the primary beneficiary, the intern must be compensated as an employee.

No factor listed below is decisive by itself.

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee - and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

New York for-profit employers must also comply with [state DOL](#) rules about unpaid internships. The state DOL's [fact sheet](#) uses the old six federal criteria, and five of its own, such as that an employer may not give interns employee benefits, train them specifically to work for that employer, or use interns to displace regular employees. A [not-for-profit](#) employer may use unpaid interns if it is organized for charitable, educational, or religious purposes, and its interns are students.

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