

Dear HR Knowledge, do I have to pay my summer interns?

It's that time of year again when college students seek summer internships. Many students want to offer their services for free to get their foot in the door and gain real-world experience. While it is not illegal to have unpaid interns, we caution employers about assuming an internship can be unpaid because of potential misclassification risk under the Fair Labor Standards Act (FLSA).

To qualify for an unpaid internship, employers must be able to prove that they are providing bona fide training for which the intern will receive school credit. This can be tricky since requiring an intern to do scanning, filing, and too many administrative tasks is not considered training. We believe having unpaid interns is not worth the risk and recommend paying interns at least the state minimum wage, which is currently \$11.00 per hour in Massachusetts.

There are **six factors** to consider when determining if an intern truly qualifies for an unpaid internship.

1. The training you provide the intern is similar to what they would receive in a vocational school or other academic institution. For example, if the intern is studying accounting, you might give them the opportunity to learn about bookkeeping or budgeting.
2. The internship is primarily for the benefit of the intern. As with rule (1), the training should further the intern's education. It should provide them with bona fide educational credit and a real learning opportunity, as opposed to just making copies and coffee runs.
3. Unpaid interns do not displace regular employees. Under this rule, not only must you avoid replacing existing workers with interns, but if your organization would have had to hire additional workers to meet current work demands, you can't fill the gap with unpaid interns.
4. You do not derive an immediate advantage from the work performed by the intern. See rule (3). The internship must be primarily for the benefit of the intern. If the employer is the primary beneficiary of an internship, for example, and the employer reduces costs or accomplishes necessary tasks through the intern, the Department of Labor (DOL) will consider the intern an employee under the FLSA.
5. You must not lure interns with the promise of employment at the end of the internship.
6. The intern must fully understand that they are not entitled to wages for the internship. Also, because of rule (5), you should not promise to pay for the internship with "back wages" upon hiring the intern as a regular employee.

Bottom line. Most employers should be paying their interns at least minimum wage. Additionally, if the intern is working in a jurisdiction with sick leave requirements, such as Massachusetts, they are entitled to earned sick time as well.



About HR Knowledge

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