

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).

New, more flexible guidelines. On January 5, 2018, the US Department of Labor (DOL) adopted a new test to determine whether interns of for-profit companies count as employees under the FLSA. The former six-part text has been replaced by the "primary beneficiary" test, which uses seven factors to determine whether the employer or the intern is the primary beneficiary of the relationship. In the previous, more rigid test, all six parts had to be met for someone to be considered an unpaid intern and not an employee. The **new** test is more flexible in that it doesn't require each of the seven parts to be met; rather all the factors, as a whole, are considered in each individual case. If analysis determines the intern is an employee, the intern will be entitled to both minimum wage and overtime pay, under the FLSA.

In determining if an intern truly qualifies for an unpaid internship the new test considers the extent to which:

1. 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 internship provides training that would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The internship is tied to the intern's formal education program by integrated coursework or by receiving academic credit.
4. The internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The internship's duration is limited to the period in which the intern is provided with beneficial learning.
6. The intern's work complements, rather than displaces, the work of paid employees while providing the intern with significant educational benefits.
7. The intern and the employer understand that the internship is conducted without entitlement to a paid job at the end of the internship.

Bottom line. Employers should take steps to ensure their interns are interns per the new DOL guidance by evaluating each internship on a case-by-case basis using the 7-factor test. If there is any question as to whether or not your internship meets the DOL's criteria; the safest approach is to pay all interns at least minimum wage. Additionally, if the intern is working in a jurisdiction with sick leave requirements, such as Massachusetts, they are most likely entitled to earned sick time as well.



About HR Knowledge

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