



## DEAR HRK

### What should we be thinking of when we hire a summer intern?

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Summer is here and many organizations consider bringing on interns. Internships can be a win-win; the intern gains real work experience and the employer gains additional help during the months when many employees take time off. Although it may seem simple to hire an intern, there are several things to consider. Internship programs can provide a great value to the student and the organization if your program is compliant with applicable employment laws. Keep in mind that an internship that offers college credits is different than a summer position that is paid.

The Fair Labor Standards Act (FLSA) requires “for-profit” companies to pay employees for all work completed. These rules do not apply to internships in the public sector or nonprofit organizations. The FLSA provides a seven-point “[primary beneficiary](#)” test to help determine if the role is truly as an intern or as an employee and whether they are entitled to minimum wage, overtime, and other wage and hour protections. When utilizing the test, no one factor is determinative; you must review all the information for each internship position for the company to ascertain if it is classified correctly.

The seven-point primary beneficiary test reviews to the degree that:

1. The intern and the employer clearly understand that there is no expectation of compensation.

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2. 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 internship is tied to the intern's formal education program by integrated coursework or the receipt of 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 internship provides the intern with beneficial learning.
6. The intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Federal law regulates the "primary beneficiary" test under the FLSA, but employers should be aware of the state or local laws that may apply to them and that additional measures may be in order to classify as an unpaid internship.

Employers should evaluate each internship on a case-by-case basis using the seven-point test. If determined they should be classified as employees, interns will need to be paid at least minimum wage and overtime in accordance with the FLSA. Are you confident your interns are classified correctly?

### **Practical Tips**

- Review existing and/or new unpaid internship programs to ensure the unpaid intern is the primary beneficiary of the internship
- If you go through the test and are still unsure how to classify, best practice is to err on the side of caution and classify the individual as an employee and pay them at least the minimum wage and overtime when applicable
- If hiring an unpaid intern, document your findings of how the intern is the primary beneficiary for your internal records, and review the terms of the engagement with the intern