

Unpaid Internships: Smooth Sailing or Ship Wreck? Legal Compliance with Wage & Hour Laws

As summer approaches, businesses and nonprofits across the country are preparing for an onslaught of energetic interns. Internships often provide students invaluable experience, enhancing their resumes and future workforce productivity. According to the National Association of Colleges and Employers' latest study, half of 2008 college graduates had internship experiences. Although no official system tracks the metrics of internships (e.g. quantity, duration, industry distribution, percent paid versus volunteer), these internships represent hundreds of thousands of students. Internships benefit not only students but also the businesses and nonprofits that hire them. Such organizations profit from engaging highly motivated, free or low-cost workers who provide a talent assessment pool for future hires. And it is precisely these marketplace benefits that are attracting the increased scrutiny and action of state and federal labor departments.

One prompt for this scrutiny is the concern that some unpaid internships may violate minimum wage and overtime laws. **Oregon, California, and New York** have initiated investigations into potential violations of state wage and hour laws by those offering unpaid internships. This past April, the U.S. Department of Labor issued a statement ("DOL Statement") clarifying federal wage and hour requirements in the context of internships offered by **for-profit** employers. [[April 2010, Fact Sheet #71: Internship Programs under the Fair Labor Standards Act \(FLSA\)](#)]. The DOL Statement reiterates Supreme Court precedent of a FLSA definition of "employment" that establishes the presumption that internships with for-profit businesses will normally be considered employment for which interns must be paid at least minimum wage. The DOL, however, does provide for-profit companies a safe harbor marked by six buoys within which unpaid internships are protected. Smooth sailing in these waters requires that the unpaid internship serves primarily as an educational experience benefitting the intern. The six markers include:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

The DOL Statement does not require that unpaid internships with nonprofit charitable organizations meet all six of these criteria. But it does demand that the facts and circumstances must demonstrate that a nonprofit's intern has "**no expectation of compensation.**" In other words, unpaid internships in the nonprofit sector must reflect the actions of a volunteer engaging in work **with no expectation of compensation.** If this is not the case, the nonprofit sector employer must generally establish compliance with minimum wage requirements.

Enforcement of current wage and hour laws with respect to interns has proved tricky in part because of the understandable reluctance of interns to report abuses. While no additional federal legislation is imminent, increased discussion by the DOL and state labor departments forecasts additional protections for unpaid interns. The increased scrutiny is an opportunity for both nonprofits and for-profit businesses to prepare for the regulatory storm clouds. By freshly mapping internship programs on a course bounded by DOL buoys, organizations can assure safe docking before the clouds gather and lightning strikes.

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