

INTERNS: TO PAY — OR — NOT TO PAY?



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Interns: To Pay or Not to Pay?

Decide What's Right for Your Workplace

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Introduction

Apprenticeships were originated in Europe during the 11th and 12th Centuries during a time when workers would actually pay a “master” to teach them the skills necessary to gain enough experience to become craftsmen and tradesmen. Internships were finally developed in the 1960’s however remained unpopular until the 1980’s and 1990’s. People interested in internships are usually searching for hands-on-training and exposure to jobs or an industry they are considering as a career.

Internships are a great opportunity for both students and graduates and become a valuable part of their career development. Short term and early internships help students gain knowledge about opportunities available in their field of interest, while longer internships and internships after college provide experience which the intern can use to gain employment with larger corporations.

An intern is essentially an apprentice who will work closely with a skilled employee in your workplace for a period of approximately three to twelve months to learn about your company and to gain experience for future employment; interns are often considered to be the hardest working employees because they want nothing more than simply learning a job in hopes of receiving an offer with great pay at the end of their internship experience.

Internships can be paid or unpaid, however many companies are jeopardizing their business because they are not familiar with the rules and differences around paying or not paying an intern. Through this guide, you will have a better understanding of the the rules and be able to make a decision about what’s right for your workplace when considering interns.

To Pay or Not to Pay? Let’s find out!

To Pay or Not to Pay?

The requirements for having an unpaid intern are quite stringent and oftentimes difficult to determine. Making the right decision for your company requires you to consider all options and requirements.

In the U.S., federal law mandates that unpaid internships meet specific criteria regulated by the Department of Labor (www.dol.gov). Before categorizing an intern as unpaid, employers should answer the questions below to ensure they meet the requirements for unpaid internships, and to avoid a minimum wage and overtime claim which violates the Federal Labor Standards Act (FLSA).

All requirements of the 6-point test must be met to qualify an intern as unpaid:

1. Is the internship similar to training that would be given in an educational environment? The internship should be structured, provide training, feedback, and constant observation throughout the internship period.
2. Is the internship for the benefit of the intern? The intern must be able to receive on-the-job-training which will help them gain future employment. In some cases, it may actually be a burden for the employer to have interns, as it may slow down productivity for those accountable for an intern.
3. Does the intern displace paid employees or does it have the potential to keep a paid employee from being hired? In order to be considered an unpaid intern, the position held by such intern must not be one which can be filled by a paid employee nor should it be able to replace a position with an open requisition. An intern must be paid if he or she can complete the tasks associated with such position without constant oversight and instruction by a paid employee.

Simply put, if the intern has a position in your workplace that is similar in some manner to what you might give to a regular employee then you should pay that intern. You may be violating the rules listed in the Fair Labor Standards Act in the event that you don't actually pay your intern.



4. Will the employer benefit from the work the intern is doing? In the for-profit sector, work that doesn't benefit the company is rare. Most workers are performing a task that will somehow immediately benefit or earn revenue for the employer. If that is the case, the position will not qualify as an unpaid internship.
5. Is the intern promised a job at the end of the internship period? Internships are meant to end after a specific period of time. If the intern is promised a job upfront, the position does not qualify for unpaid internship because it would appear that the intern is potentially taking the position of someone who could be paid throughout the internship period.

Some companies train an intern and later realize that they are a good fit to their company and offer them a paid position in lieu of the unpaid internship.

6. Do both the intern and the company understand that it's an unpaid position? Both parties must be fully aware of the unpaid internship to ensure adequate training.

Now that you have answered the questions above, use the following section to help you clarify your decision and further determine if your position qualifies for an unpaid internship.

Making the Right Decision for Your Workplace

Many companies have a tough time determining when an internship position can be unpaid. Because most for-profit companies do not qualify for unpaid internships, this section of the guide will simplify the decision by giving you specific reasons as to when your internship position must be paid or unpaid.

Companies must be cautious and ensure fairness when employing unpaid interns; making sure that the intern is not simply providing free labor. Here are some common questions and answers to simplify your decision:

1. Does our internship position qualify as unpaid if we provide a stipend or lunch money?

You may offer a stipend and or lunch money, however, if the 6-point test determines that your position does not qualify, the employer is required to pay the intern at least the minimum wage and follow overtime rules.

Nonprofit organizations who qualify for unpaid internship programs will sometimes offer a stipend, mileage reimbursement, or meals if they're available at the center.

2. Does our non-profit organization qualify for unpaid internships?

Yes, according to the Department of Labor, most nonprofit organizations have an additional exception for interns that "volunteer their time".

It is important to have a structure and to follow the guidelines of an internship program so that your interns or volunteers will feel that they are making a difference and receiving adequate experience which can be utilized for employment once their internship commitment to your organization expires.

3. Do government and federal law positions qualify for unpaid internships?

Conveniently, Congress exempted itself from the Fair Labor Standards Act and can employ unpaid interns without meeting the 6-point test requirements.

Many interns are interested in politics and in order to gain valuable experience, *and exposure*, they will accept unpaid internships lasting from three to twenty-four months.

4. Do I have to pay a student if they are getting college credits?

Yes, in 2003, “[Black Swan](#)” ruling suggests college credit is not a reason to not pay your interns.

Some colleges have moved away from offering credits because rather than receiving the training expected, interns were simply being asked to answer the phones, make photo copies, and pick up coffee for meetings.

Although the 6-point test is a very helpful way to determine how to categorize an intern, the law focuses on whether or not the business derives immediate advantage from the work performed by the intern. At the end of the day, the company needs to be sure the program is benefiting the student and not the company.

Intern Agreements

Overall, while it is typically best to pay your interns, the decision as to whether your position qualifies for an unpaid internship should be based on the 6-point test, focusing on the benefit it provides the intern.

Because interns or volunteers are a part of your workforce, you should provide a clear understanding of the expectations in order for the worker to gain valuable insight and exposure.

Great communication begins when you include the following in your agreements:

1. CONDITIONS OF THE AGREEMENT

- Mention if the internship is related to an educational purpose and whether or not credits are given for completion of the internship program
- Clarify that there is no guarantee or expectation that the internship will result in employment with the company
- The intern will not replace or displace any employee of the company
- The intern will receive direct and close supervision by a designated paid employee
- The company does not benefit from the work performed by the intern

2. SPECIAL SKILLS AND EXPERIENCE

- Itemize the skills and experience the intern is seeking to gain
- Itemize activities the intern will perform to gain such experience
- Include program details and any support the company will provide

3. INTERN ACKNOWLEDGEMENT

- Specify a regular schedule that the intern or volunteer must maintain throughout the internship program
- Address a code of conduct that must be followed, such as punctuality, proper health and grooming habits, and appropriate dress
- Address any policies or Company rules that must be followed, such as complying with business practices and procedures (provide copies)
- Include whether or not the company is liable for personal injury or worker's compensation should an intern or volunteer sustain an injury.

4. REIMBURSEMENT & COMPENSATION

- Is the intern or volunteer entitled to mileage or parking reimbursement?
- Document wages, compensation, or benefits the intern is entitled to for the time spent in the internship
- Mention if the internship includes wages or compensation, and include the payroll schedule, and pay options such as direct deposit

5. TERMINATION

- State the date the internship program will end and whether specific knowledge or projects are required in order to receive educational credit or a stipend.

Intern Agreements are a great way of protecting your Company and create a line of communication which everyone can support.

Conclusion

While unpaid internships are possible, the threat of legal liability has many companies opting to pay at least the minimum wage in order to avoid claims of potential violations under the Fair Labor Standards Act.

If an internship program is right for your company, be sure to create a structure which follows the recommended guidelines and adequately train those responsible for implementing your program.

Always keep in mind that if an internship qualifies as a paid position, legally, interns must be paid the federal minimum wage (at the very least) for the services they provide within the “for-profit” or private sector. They must also be paid overtime. Both regulations fall under the Fair Labor Standards Act (FLSA).

Seek professional assistance from an Attorney or Human Resources Specialist to ensure you are not violating FLSA rules and regulations.

About the Author



Carmen Torres brings over twenty years of experience creating equitable, safe, and collaborative workplace environments for both, employers and employees. As a trusted adviser to many organizations, she has successfully helped countless small to mid-size businesses and non-profit organizations establish reliable, stable human resources departments. Her approach includes a 360° analysis of the human resources function that results in building job descriptions, policy and procedures manuals, conflict resolution, employee retention and terminations structures, compliance/audits standards, and employee communications.

Ms. Torres brings a deep understanding of the complexities of managing human beings and meeting regulatory requirements while maintaining the organizational mission, achieving business goals and meeting quality standards – a perspective that converts her into an invaluable resource.

Ms. Torres speaks, has been interviewed, and can present on the following topics: Top 10 ways to show appreciation to your employees, Respect in the workplace, Employee vs. Contractor, The Benefit of an Employee Handbook, Interns: To Pay or Not to Pay?.

Carmen Torres is a member of PIHRA (Professionals in Human Resources Association) and in 2003 she received her Human Resources Management Certification through the extension program at Loyola Marymount University in Los Angeles, CA.

In her spare time, Ms. Torres enjoys gatherings with her family and you'll often find her improving her swing at the golf course!

Did you find this report helpful? Carmen's goal is that you find the information helpful in deciding whether an internship program is right for your workplace. To receive other reports similar to this and to learn more about Carmen Torres and My HR Specialist use the following contact information:

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