

Summer Internships Are Not Free Labor

The recession, and the resulting loss of jobs, has prompted people of all experience levels to apply to companies for internships. Often they are willing to work without pay in order to get their feet in the door. The approach of summer will undoubtedly bring thousands of college students to employers' doors seeking paid and unpaid internships.

While many private-sector employers make paid internships available during summer months, others, inadvertently or by design, do not treat interns as employees. Instead, they label them as trainees, assistants, or learners and provide little or no pay for the work they perform. What many job seekers and employers do not realize is that, unless a summer job meets certain conditions, for-profit companies must pay at least the minimum wage to their interns under federal and state rules.

Federal Criteria

The federal Fair Labor Standards Act (FLSA) defines an employee broadly as “any individual employed by an employer.” The FLSA definition of employ includes “to suffer or permit to work.” In 1947, the U.S. Supreme Court held that the FLSA definition does not make employees of all persons who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. *Walling v. Portland Terminal Co.*, 330 U.S. 148. This may apply to interns who receive training for their own educational benefit if the training meets the following six criteria ([see U.S. Department of Labor Fact Sheet #71](#)):

- The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment;
- The internship is for the benefit of the intern;
- The intern does not displace a regular employee, but works under close observation of existing staff;
- The employer that provides the training derives no immediate advantage from the activities of the intern and, on occasion, the employer's operations may actually be impeded;
- The intern is not necessarily entitled to a job at the completion of the internship; and
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

The U.S. Department of Labor has consistently applied these factors in response to questions about the employment status of student interns. Whether or not student interns at your organization are employees under the FLSA will depend upon all the circumstances surrounding their activities.

What Employers Should Do

Generally, employers must comply with all FLSA provisions and with state laws that are more restrictive in favor of the employee or require higher pay. Employers who are planning to hire unpaid summer interns must review carefully federal- and state-law criteria for determining

whether a worker is an employee. If an intern should have been paid as an employee, the employer may be liable not only for wages, but also for any overtime pay, employee benefits, meal and rest periods, and penalties.

For More Information Contact:

Philip B. Rosen

Jackson Lewis LLP

666 Third Ave

New York, NY 10017

Email: RosenP@jacksonlewis.com

Phone: (212) 545-4001

Linda R. Carlozzi

Jackson Lewis LLP

666 Third Ave

New York, NY 10017

Email: CarlozziL@jacksonlewis.com

Phone: (212) 545-4040