

Paid “Internships”

- **For employment law purposes, student workers are treated like other part-time employees**
- **Follow minimum wage, I-9 and other employment-related laws and regulations**
- **Assume that all employment laws apply**
- **Should consider whether prudent or necessary to apply your customary hiring, employment practices**

Qualified Unpaid Internships

- **Primary issue: Are they “employees” under Fair Labor Standards Act and Vermont wage & hour laws?**
- **If so, standard minimum wage rules apply**
- **If not, they do not need to be paid at all**

Qualified Unpaid Internships

Long-standing federal Department of Labor Test. Not “employee’ if working for own advantage on premises of another.” To be unpaid “non-employee” internship, all six of the following factors must be met:

- 1. The training is similar to what would be given in a vocational school or academic educational instruction;**
- 2. The training is for the benefit of the trainees or students;**

Qualified Unpaid Internships

- **3. The trainees or students do not displace regular employees, but work under their close observation;**
- **4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;**

Qualified Unpaid Internships

- **5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and**
- **6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.**

Case studies - DOL Opinion Letters

- **Correct answers are:**
 - **A- Qualified unpaid internship (no employment relationship)**
 - **B- Not qualified unpaid internship (regular employment relationship)**
 - **C- Need more information to answer question**

Case Studies – DOL Opinion Letters

1994 Opinion Letter:

- **Hostel Management Training Course graduates would assist in daily operations of hostels, check guests in and out, perform maintenance and administrative work, be involved in educational/interpretive programming for guests, report to manager of hostel.**
- **Graduates get room & board at hostel in exchange for 25 hours/week of work (important for graduates to get feel for real life of hosteller). Lasts only 1-2 months.**
- **No college credit.**

Case Studies – DOL Opinion Letters

2004 Opinion Letter

- **Primarily marketing/communications majors would distribute a company's stickers and flyers on campus, add information about company's product to chat rooms and web sites, collect data on campus population and other students' reactions to electronic and in-person promotional activities, and survey 50 people on campus.**
- **Students work with faculty advisor, there is a syllabus, and they receive college credit.**

Case Studies – DOL Opinion Letters

1995 Opinion Letter

- **College students who are physical fitness instruction/exercise physiology majors would do internships in health/fitness setting (e.g., YMCA, health clubs).**
- **Receive college credit, required to participate to receive degree.**
- **Receive stipend**

Case Studies – DOL Opinion Letters

2006 Opinion Letter

- **University provides one-week externship program to expose students to various career choices, in which students “shadow” an employee at sponsoring employer.**
- **Sponsoring employer designs program to help student learn about the job.**
- **Students perform some small office tasks and project-related work.**
- **No compensation or college credit.**
- **Employers do use experience to screen interns as potential employees, but no job guarantees.**

Practical Application of Factors

- **1. The training is similar to what would be given in a vocational school or academic educational instruction;**
- **2. The training is for the benefit of the trainees or students;**
- **3. The trainees or students do not displace regular employees, but work under their close observation;**
- **4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;**
- **5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and**
- **6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.**

Applicability of Other Laws

- **If no employment relationship present under detailed DOL / FLSA test, fair to assume that withholding and FICA/FUTA-type tax obligations do not apply under common law test used for tax purposes**
- **Unemployment compensation: “Employment” does not include service performed by individual under 22 who is enrolled at college/university where service is part of educational activities and student receives academic credit**
- **Workers’ compensation: statutory definitions ambiguous, but per DOL informal opinion, if bona fide unpaid internship, receiving credit, probably do not have to cover (but employer may want to to get exclusivity benefit)**
- **To be most prudent, assume that prohibitions against hostile work environment harassment, discrimination will apply, by means of employment and/or public accommodation laws**

Questions?

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