

Interns And Trainees

Q. What requirements do we have to meet as an employer in order to have a student come to our workplace as an unpaid intern or trainee?

A. Certain interns and trainees are not considered employees if they work for their own advantage on the premises of another, without any express or implied compensation agreement. Often, the arrangement is one in which a student intern earns high school or college credit in exchange for participating in a training program conducted by the employer. WH Publication 1297, issued by the U.S. Department of Labor, provides the following tests:

CRITERIA FOR TRAINEES

When *all* of the following criteria apply, trainees or students are not employees within the meaning of wage and hour laws:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
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 supervision;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students; and on occasion his 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.

Q. If we bring in a student as an intern, do we have to obtain an employment certificate and follow other child labor laws?

A. Not if the individual meets the legal criteria, listed above, to be classified as an intern or trainee.

Q. What makes a student an employee as opposed to an intern or trainee?

A. Students are considered employees and their work covered by the FLSA if:

1. They provide essential services to the employer; or
2. They are working in a position where someone is normally paid; or
3. There is a history of paying someone to do the same or similar work; or
4. Other people are currently paid for the same or similar work.

Under the wage laws, you "employ" an individual when you "suffer or permit" the individual to perform work for you.

However, the Supreme Court has ruled that the "suffer or permit" definition does not necessarily make everyone working at your business an employee. For example, those who work without any express or implied compensation agreement may work for their own advantage on the premises of another. The exemptions for this sort of relationship are narrowly defined and usually apply only to student learners, and in some cases, volunteers or in-school placements.

Whether the FLSA sees trainees or students as employees depends on their activities on the premises of the employer. Below, we restate the criteria for unpaid interns in more detail. As noted earlier, if all of the following criteria apply, the trainees or students are not employees within the meaning of the FLSA:

There must be a program that includes the following elements:

- A planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to pre-employment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate.

- The learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills.
- The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills.
- The learning experience provides for real or simulated tasks or assignments that push students to develop higher-order critical thinking and problem-solving skills.

The student receives ongoing instruction at the employer's work site and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student performs is offset by the burden to the employer from the training and supervision provided.

The placement of the student at a work site during the learning experience does not result in the displacement of any regular employee. In other words, the presence of the student at the work site does not result in an employee being laid off, does not result in the employer not hiring an employee it would otherwise hire, and does not result in an employee working fewer hours than he or she would otherwise work.

The student is not entitled to a job at the completion of the learning experience--but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training.

The employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience--although the student may be paid a stipend for expenses such as books or tools.

When these criteria are continuously met, an employment relation does not exist and the minimum wage, overtime and child labor provisions of state and federal laws are not applicable.

Tip: Labeling a work site experience "internship," "mentorship," or "structured work-based learning," has absolutely no impact on whether or not there is an employment relationship. If the above criteria are met, the student is not an employee and the experience qualifies as training rather than employment. If, on the other hand, the above criteria are not met, the student would most likely be an employee and must be paid--even if the experience is promoted or labeled as "unpaid internship."

There cannot be an employment relationship at any time while a student participates in the program. That is, the student cannot be an eligible participant in the program during school hours, assume an employment relationship after school hours, and resume the participation in the program the next day. Likewise, a student may not be a "trainee" during the school year, become a paid employee during the summer, and revert back to "trainee" status when school begins.

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