

Internship Compliance 101: How to Hire Interns


Internship
Compliance

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Recruiting and Hiring Interns

Historically, unpaid internships provided college students a chance to get their feet wet and network in their chosen field. Today, internships are still a great way for students to gain experience — and for companies to build relationships with emerging talent. But interns must receive more than these non-monetary benefits. Most internships do not qualify to be unpaid, a fact that organizations should take into account when establishing an internship program and hiring interns.



There are very few situations in which an organization can lawfully host unpaid interns.

- If your organization is a non-profit charitable entity or in the public sector, interns may count as volunteers, in which case they might not need to be paid. However, there are many situations in which even internships with non-profit organizations must be paid.
- If you run a for-profit business, determining the applicability of unpaid internships is more complicated. Unless an internship meets specific (and complex) criteria, any work performed by an intern is subject to minimum wage, overtime pay, and other requirements.

This guide provides insights into some potential pitfalls of recruiting and hiring interns, along with key best practices for navigating the process in the context of the Fair Labor Standards Act (FLSA).

* **IMPORTANT NOTE:** This article addresses federal requirements. Applicable state and local wage and hour laws may impose additional or different requirements. In addition to FLSA compliance, employers may also have obligations with respect to interns under other federal, state, or local employment laws, such as (but not limited to), complying with all applicable anti-discrimination and anti-harassment laws, among other statutes.



A Primer on FLSA & Internships

Internships can be a win-win for employers and interns alike. Employers can get low-cost (but usually not free) labor, and interns can gain valuable, real-world experience. In most cases, employers who work with interns are required to comply with minimum wage, overtime pay, and other requirements under the FLSA. Exceptions to this requirement are few and far between.





A Brief Overview of the FLSA

Introduced in 1938, the FLSA is a federal law that regulates compensation-related factors such as minimum wage, overtime pay, recordkeeping requirements, and child labor. This law protects most employees, including the vast majority of interns.

If your organization utilizes interns, or is thinking about doing so, it's very important to know how and when this law applies, and to realize that it does apply to most internships.

Unpaid Intern or Employee: The Primary Beneficiary Test

The U.S. Department of Labor (DOL) uses the [Primary Beneficiary Test](#) to determine whether or not an internship program can be unpaid. The DOL considers the seven factors listed below to determine whether an intern is, in fact, an employee for purposes of the FLSA:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise or expectation of compensation, express or implied, suggests that the intern is an employee.
2. The extent to which the internship provides training that would be similar to what would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

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5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The DOL will review each case individually using the Primary Beneficiary Test. It's a flexible test, with no single factor being determinative. In essence, only internships that are primarily true educational or learning opportunities are likely to qualify as unpaid. Other than these limited circumstances, interns are considered employees and must be compensated.

Practical Considerations

There are very few circumstances in which an internship can be unpaid. Internships can be of great benefit to employers and student workers alike, but it's important to remember that, with few exceptions, these workers should, in fact, be paid employees.

FLSA Compliance Highlights

If an internship does not qualify to be unpaid under the Primary Beneficiary Test, that doesn't mean your company can't have interns. It just means that you need to pay them in a manner that [complies with the FLSA](#),



as well as any applicable state and local wage and hour requirements. Justworks' [Guide to Paid internships](#) provides a helpful overview of how to move forward. Key highlights to consider:

Minimum Wage

Internships that do not meet the Primary Beneficiary Test must be paid at least minimum wage. As of 2023, [federal minimum wage](#) is \$7.25/ hour. Many [states, counties, and municipalities](#) have a higher minimum wage that would apply based on where the intern is performing work for your company.

Overtime

Most, if not all, intern jobs are [not exempt from overtime](#) requirements. This means that interns who work more than 40 hours in a workweek will need to be paid overtime. Federal law requires overtime pay of no less than 1.5 times the regular hourly rate of pay for all work performed beyond 40 hours in a workweek. State and local overtime pay requirements may be more stringent.

Child Labor

Do you work with interns who are under 18 years old? If so, you'll need to comply with the [FLSA's child labor provisions](#), which are designed to protect minors in the workplace. Some [states have additional child labor](#) protections.

Recordkeeping

If you employ interns, the same FLSA recordkeeping requirements apply to them as they do to other employees. Employers are required to keep records on wages, hours, and other items as specified in the FLSA [recordkeeping requirements](#) (and applicable state and local laws), such as the employee's home address and occupation.



The Very Real Risks of Unpaid Internships

It's understandable that people might think hosting unpaid internships is a good idea, but if not done properly, there are inherent risks. Internships aren't about free labor — they're about educational experiences. Classifying an internship as unpaid if it doesn't clearly meet the Primary Beneficiary Test — and most internships don't — poses compliance risks that can be quite costly for your company.



- Incorrectly classifying internships as unpaid could result in being responsible to pay back pay, liquidated damages, punitive damages, interest, and attorneys' fees and costs. Claims could be brought as a class action on behalf of all unpaid interns during a given time period. The legal costs of defending such claims can be astronomical.
- If it is determined that an unpaid intern should really have been a paid employee, your company may also be liable for workers' compensation contributions (and injuries), unemployment insurance and benefits, and the state and federal income taxes that were not properly withheld originally.
- On top of the financial consequences, your company could face negative publicity, investigations by the DOL, and civil fines.

* The bottom line is that it's important to follow the law when it comes to internships. If there is any question as to whether an internship qualifies as unpaid, the most prudent — and probably the least costly — option may be to pay at least minimum wage and comply with all relevant employment laws.



Key Considerations and Tips for Hiring Interns

As you've probably gathered, when it comes to hiring interns, there are right ways and wrong ways. Keep these tips in mind to help guide wise compliance decisions about internships.



**For-profit vs. Nonprofit**

Unpaid interns for nonprofit charitable organizations (where the intern volunteers without expectation of compensation) are more likely to be permissible than internships with a for-profit company. However, this is not always the case. There are many circumstances where internships with nonprofit organizations must also be paid.

Primary beneficiary

Think through the seven factors the DOL uses to determine whether an employer legally has to pay an intern or trainee. If there is any question as to how the DOL would view the internship, it may be best to pay at least minimum wage. Seek legal advice if you are unsure of whether your approach to internships meets the DOL criteria for an unpaid internship.

Offer college credit

One way to help ensure educational value is to coordinate with a school to offer course credit instead of pay. However, keep in mind that just offering credit is not sufficient for an internship to qualify as unpaid. An internship program is still required to meet all aspects of the Primary Beneficiary Test.

Pay interns

If you're going to have an internship program — which can be a great thing to do — the safest thing to do is to make the program a paid one. The easiest (and comparatively cheapest) way to avoid costly compliance woes related to interns is to simply pay interns at least minimum wage for the work that they do for your organization, and follow all FLSA requirements (as well as other applicable compliance obligations).

Remote interns

If you plan to utilize [remote interns](#), be sure you're aware of — and comply with — all state requirements specific to where the intern will be working. These may include wage and hour, workers compensation, state or local tax filing, break time, and other requirements.



Internship Hiring Best Practices

Armed with the tips above, you're on your way to [hiring interns the legal way](#). However, there's still more to consider. Be sure to incorporate the following best practices into your approach to hiring interns:

- Never promise or suggest that a regular position will be waiting for the intern once the internship is complete. If you do, it may create a contractual agreement to do so.
- Be clear about the internship ground rules and expectations in advance. Ideally, create an internship agreement that is signed by both interns and their academic or internship advisors at school. Be sure to have the agreement reviewed by legal counsel in advance.
- Before you even begin the hiring process, make sure you have details like compensation, school credit, oversight, scheduling, intern selection, and internship length worked out.
- Prepare an intern-specific job description that explicitly maps out the duties, projects, and other expectations associated with the internship.
- Follow equal opportunity laws in recruiting and hiring interns.
- Cover interns under your worker's compensation policy to limit liability exposure. Companies are almost always required by law to provide workers' compensation coverage for all interns.



Justworks Can Help

By now, you're probably aware that hiring and onboarding interns involves many important compliance considerations. Without the proper procedures, you open your business up to the potential for regulatory agency investigations, expensive lawsuits, and damaging PR. Staying in compliance with applicable laws and regulations without proper procedures or systems in place can be difficult.

That's where [Justworks](#) comes in. We can help simplify the process of hiring and onboarding quality talent, including interns, for customers using our PEO. We can provide HR best practices and expert resources to help our customers throughout the United States comply with employment requirements relevant to their interns. In other words, when you work with Jusworks, we've got your back. We'll help you focus on what you do best: growing your business and creating a great place to work for employees and interns alike.



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