

Rules Regarding Interns Looser Than in the Past, But Wages Still Required in Many Cases

Our relatively high unemployment rate has left many recent graduates without jobs and willing to consider working as unpaid “interns” in order to gain experience and connections in business. Employers sometimes consider hiring interns because they view internships as an excellent means of evaluating potential candidates at little or no cost. Applicable laws do not always permit employers to avoid paying wages to persons willing to be classified as unpaid interns, however.

Under federal law, courts and the Department of Labor consider six factors in determining whether an intern is entitled to wages in exchange for his or her services. The factors include:

- Similar to vocational training; extension of formal education- the work or training should be similar to that provided in a vocational school, and should function as an extension of formal education for an intern enrolled in an educational program;
- Benefit to intern- the work or training should be provided primarily for the benefit of the intern;
- Not functioning as an employee- bona fide interns generally do not replace or perform the work of regular employees (hence so-called “on-the-job training” is generally inappropriate for a true intern);
- Benefit to employer- the employer should not derive any immediate benefit from the work or training;
- Right to employment- interns should not be entitled to employment with the employer at the conclusion of the internship; and
- Expectation of compensation- both the intern and the employer should have no expectation that the intern will be compensated for the training or work.

The Department of Labor will generally consider an individual to be a bona fide intern only if all six of the aforementioned factors weigh in favor of intern status. (Rules differ for some non-profit organizations.)

Employers sometimes assume mistakenly that interns are not entitled to wages simply because they are receiving academic credit for their work, but academic credit does not excuse employers from paying wages that are otherwise due if the criteria discussed above are not satisfied.

The California Division of Labor Standards Enforcement (DLSE) traditionally required employers to satisfy a standard more stringent than that utilized under federal law in order to avoid paying interns at least the minimum wage for their work. In addition to the criteria summarized above, the DLSE required that interns satisfy five additional criteria. An Opinion Letter issued by the DLSE in 2010 loosens and clarifies California’s rules, however, making it easier for employers to offer unpaid

internships. The Opinion Letter states that the DLSE will now consider only the six criteria listed above in considering whether an individual qualifies as a bona fide intern.

The DLSE's letter also clarified the agency's position with respect to three issues that have disqualified many persons from intern status in the past:

- Occasional performance of work normally done by employees not prohibited- In the past, the DLSE has taken the position that performance of any work which could be performed by an employee would defeat intern status and require the payment of wages. The Opinion Letter clarifies that the performance of occasional and incidental work tasks will not preclude intern status if the work performed is primarily for the benefit of the intern and does not displace other workers.
- Close supervision required- Interns require and should receive extensive supervision from the employer. The likelihood of a person qualifying as a bona fide intern decreases in direct proportion to the amount of independence and autonomy with which he or she performs in the workplace; and
- No immediate benefit to employer- While employers should derive no immediate benefit from the work of an intern, the DLSE now permits employers to realize benefits that may accrue gradually over time, particularly toward the end of an internship when the intern inevitably begins to apply the knowledge and skills acquired during the internship.

Although the DLSE's change in position is undoubtedly good news for employers, they should continue to exercise caution when hiring interns, however, and should recognize that applicable law may require them to pay interns at least the minimum wage for their work. If you have any questions about employing interns or volunteers, or any other issue relating to employment law, please contact one of our attorneys:

[Daniel F. Pyne III](#)
[Richard M. Noack](#)
[Ernest M. Malaspina](#)
[Karen Reinhold](#)
[Erik P. Khoobyarian](#)
[Shirley Jackson](#)