

Summertime Blues: Employee Status of College-Student Summer Interns (a Wage & Hour Review)

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This is the time of year when businesses are hiring college summer interns. Many businesses erroneously assume that student interns are not employees, particularly if they “volunteer” or if they are earning college credit for work performed. Some college students qualify for exemptions, but not all do. This summary briefly reviews some of the relevant concerns related to summertime employment of college- or university-student interns. Issues related to child labor or other student-learner subjects are beyond the scope of this brief summary.

Be familiar with the *Portland Terminal* six-factor test

The U.S. Department of Labor (USDOL) applies the following six-factor test derived from a 1947 case to determine whether an employment relationship exists when employers take on student interns who are ostensibly “training” with the employer:

1. The training, even though it includes actual operations 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;
3. The trainees do not displace regular employees, but work under close observation;
4. The employer providing the training derives no immediate advantage from the activities of the trainees, and on occasion the employer’s operations may actually be impeded;
5. The trainees are not necessarily entitled to a job at the completion of the training period; and
6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

See *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947).

If all six factors are established, then no employment relationship exists and the student intern is not subject to coverage under the Fair Labor Standards Act (FLSA). This general “trainee” test also applies to school-to-work learning programs under the School-to-Work Opportunities Act of 1994. Please see USDOL guidance on [trainees](#) and on [school-to-work programs](#).

Volunteers

Although it is somewhat of an oversimplification, stated generally, no private employer should assume that it may permissibly suffer or permit volunteers to perform work for it. If any “volunteers” are suffered or permitted to work for a private employer, they would likely be classified as an employee. Public employers may allow employees to volunteer in certain circumstances so long as the employees are not volunteering to perform work that they are already performing as part of their regular job and other conditions are satisfied. Finally, individuals may usually volunteer part-time work for charitable, religious, or other nonprofit community or public services without creating an employment relationship subject to the FLSA so long as certain conditions are satisfied.

Please see [USDOL guidance on volunteers](#).

But the student “volunteered” to get experience so I am not liable, right?

Wrong. Eager college students looking to get a leg up in the marketplace may “volunteer” to work or may work through breaks or after hours without claiming overtime. If the student fails the *Portland Terminal* test and is classified as an employee, the employer must comply with the FLSA and the Alaska Wage and Hour Act (AWHA) regardless of the student’s motivation.

A special wrinkle for University of Alaska college students

Under Alaska law, a student enrolled in the University of Alaska who participates in a University of Alaska practicum to gain practical work experience as part of the student’s curriculum as described under AS 14.40.065 is exempt from state minimum wage and overtime standards. See AS 23.10.055(17). Federal standards would still apply, however. State personnel with the Alaska Department of Labor and Workforce Development advise that this exemption only applies to University of Alaska students—it does not apply to college or university students from any other institutions (even other in-state institutions).

Other special considerations

If the student intern is classified as an employee, the student should be compensated no differently than any other employee. That means that, subject to operation of statutory exceptions and exemptions, the student would usually be eligible for minimum wage and overtime. Here is where wage and hour law can get interesting, however. Federal law allows for payment of a sub-minimum wage for certified student-learners. See 29 C.F.R. §§ 519.1, et seq.; 29 C.F.R. §§ 520.500, et seq.

Alaska law includes no such authority. However, the AWHA includes numerous exemptions and exceptions to state minimum wage and overtime standards. Thus, it is at least theoretically possible that a college student could be hired for a job excepted or exempted from state minimum wage law, particularly as noted if the student is enrolled in the University of Alaska and qualifies for the “practicum” exemption set forth at AS

23.10.055(17). In such instances, federal law would provide the default standard and, if the student was certified as a student-learner, the employer could pay a rate below the federally prescribed minimum wage. But employers should not assume that federal law operates as a default standard without first conferring with counsel.

Alaska law also exempts any person under the age of 18 who is employed on a part-time basis not more than 30 hours in a week. See AS 23.1.055(11). Thus, it is possible that a college student could qualify for this exemption. Again, federal law would provide the default standard for any such persons. A full review of child labor issues is beyond the scope of this brief summary.

Where can I get more information?

The Alaska Department of Labor and Workforce Development is always a good source of information and may be contacted at (907) 269-4900.

You may also refer to the [USDOL's Fact Sheet #71](#).

In 2006, the USDOL published [a useful opinion letter](#) addressing the *Portland Terminal* test in the context of university externs. (For a copy of the letter, please contact us.)

Recommendations

- Always confer with counsel before classifying employees and when making any other wage and hour decision.
- Always begin with the assumption that any person performing any job or task for you should be classified as an employee.
- Never assume that anyone may lawfully “volunteer” or perform any work for you without being covered by wage and hour standards.
- Never assume that a college student earning credit would be classified as a trainee and not as an employee without first conferring with counsel.
- Never assume that any employee is exempt from minimum wage and overtime requirements.
- When in doubt, classify a worker as an employee entitled to minimum wage and overtime, and confer with counsel.
- Have counsel assist with drafting a standard internship agreement in which the intern acknowledges that the six factors are present, particularly the absence of a wage. Forms don't control, but they are helpful in a close case.

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