

STUDENT INTERNSHIP AND TRAINING PROGRAMS

Many employers have questions about the somewhat confusing rules that apply to interns. This article sets forth employers' obligations with regard to the hiring and retention of interns who are either unpaid or who are compensated at less than the current minimum wage of \$8.00 per hour.

While programs do exist whereby students are permitted to perform work which benefits third parties and for which they are not compensated, the education of such individuals must be the primary purpose of these programs.

California Internship Program

The California Labor Commissioner has developed something called an “exploratory work experience education program” which is one way to set up an internship program. Under California's guidelines, students enrolled in such programs will not be considered to be employees entitled to wages. California's Code of Regulations describes the responsibility of students and employers under such programs. Generally, students must be pursuing a professional course of study, they must do no productive work, and there must be no intent to teach productive skills; rather, students may merely observe and sample a variety of work conditions. Further, the students may not be paid, but they may receive school credit. The work must be related to a school course at an accredited college, and should be performed during school hours.

Training Programs Under Federal and State Law

In addition, the federal and state laws regulating wages and hours provide employers with an alternative means of providing “training programs” for persons not on an employer's payroll. The federal authorities regulating payment of wages for employers have determined that unpaid trainees or students will not be considered employees (and therefore will not be entitled to compensation) only if all of the criteria are satisfied:

- (1) The training, even though it includes operation of the employer's facilities, must be similar to that given in a vocational school;
- (2) The training must be for the benefit of the trainees or students;
- (3) The trainees or students must not displace regular employees but must work under their close observation;
- (4) The employer providing the training must derive no immediate advantage from the activities of the trainees or students, and on occasion its operations should actually be impeded;

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

In applying these criteria, the federal authorities have issued numerous favorable rulings pertaining to specific training programs *primarily* for the benefit of the trainee or student in various fields. However, the authorities will assert that an employment relationship exists (and thus that such “trainees” are entitled to minimum wages) if any of the requirements noted above are not satisfied.

Notably, Nancy J. Leppink, acting director of the Department of Labor’s Wage and Hour Division, was recently quoted in a *New York Times* article stating: “There aren’t going to be many circumstances” where for-profit companies can have unpaid internships and “still be in compliance with the law.” As a result, it is critical that employers ensure that their internship programs comply with all applicable laws in order to avoid liability for wage and hour violations such as failure to pay minimum and overtime wages, missed meal and rest periods, failure to timely pay regular and final wages, and failure to maintain accurate payroll records.

Questions?



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