

FOCUS ON POLICY

Unpaid Internships in New York: Understanding the U.S. Department of Labor and New York Labor Guidelines Applicable to For-Profit Companies

Unpaid internships historically have been a common practice among for-profit companies and a valuable means for students to gain work experience and earn high school or college credit. In 2010, however, the U.S. Department of Labor (DOL) issued guidelines limiting for-profit companies' ability to offer unpaid internship opportunities. The focus of these guidelines is the requirement that the internship serve as educational training and a benefit for the intern, not the benefit of the employer.

According to the DOL, internships at for-profit companies must meet the following six requirements to exempt the internship from the requirements of the Fair Labor Standards Act (FLSA). If the internship satisfies the six requirements, an FLSA employment relationship does not exist, and the Act's minimum wage and overtime provisions do not apply:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

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Given the stringency of these requirements, for-profit employers find it increasingly challenging to offer unpaid internship to students. In fact, in 2010, Nancy Leppink, DOL's Acting Wage and Hour Administrator, told *The New York Times*, "If you're a for-profit employer or you want to pursue an internship with a for-profit employer, there aren't going to be many circumstances where you can have an internship and not be paid and still be in compliance with the law."

In addition to the DOL's internship requirements, New York law limits for-profit companies' ability to provide internships to students. In New York, for-profit employers must meet six additional requirements to offer unpaid internship opportunities:

1. The trainees or students are notified, in writing, that they will not receive any wages and are not considered employees for minimum wage purposes.
2. Any clinical training is performed under the supervision and direction of people who are knowledgeable and experienced in the activity.
3. The trainees or students do not receive employee benefits.
4. The training is general and qualifies trainees or students to work in any similar business. It is not designed specifically for a job with the employer that offers the program.
5. The screening process for the internship program is not the same as for employment and does not appear to be for that purpose. The screening uses criteria relevant only for admission to an independent educational program.
6. Advertisements, postings or solicitations for the program clearly discuss education or training, rather than employment, although employers may indicate that qualified graduates may be considered for employment.

Because of the numerous requirements for-profit employers must satisfy to offer internship opportunities, it is essential that New York employers understand both the DOL and New York Labor guidelines to ensure that any internship programs are compliant.