Interns: Students or Employees?
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While internships come in many shapes and sizes, one of the common questions asked by employers developing internship programs is whether the employer must pay an intern for his/her work. The answer to this lies in an analysis of the on-the-job experience the individual will have in relationship to the standards set forth under the Fair Labor Standards Act, which requires employers to pay at least the minimum wage to employees.

Paid vs. Unpaid Criteria
Pursuant to this law, the U.S. Department of Labor (DOL) has developed six criteria for identifying a learner/trainee who may be unpaid. Neither the law nor the regulatory guidance uses the term "intern."

The criteria are:

- The training, even though it includes actual operation of the employer's facilities, is similar to training that would be given in a vocational school.
- The training is for the benefit of the student.
- The student does not displace regular employees, but works under the close observation of a regular employee.
- The employer provides the training and derives no immediate advantage from the activities of the student. Occasionally, the training may actually impede operations.
- The student is not necessarily entitled to a job at the conclusion of the training period. The employer and the student understand that the student is not entitled to wages for the time spent training.

While not all six factors have to be present for an individual to be considered a trainee, the experience should ultimately look more like a training/learning experience than a job.

This raises the issue of the fourth criterion that the employer derives no benefit from the student's activities. This seems to fly in the face of contemporary practice. In the same way that a student working in a college laboratory is expected to become actively involved in the work at hand, an intern is expected to participate in the work of the company to make the experience educationally valid. Several DOL rulings, while not addressing the criteria head on, seem to suggest that as long as the internship is a prescribed part of the curriculum and is predominantly for the benefit of the student, the mere fact that the employer receives some benefit from the student's services does not make the student an employee for purposes of wage and hour law.

Wages, Stipends, & Expectations of a Job After Graduation
Other criteria that have been questioned are the payment of wages and the expectation of a job after graduation. In many cases, the employer pays a stipend to students for their meals and lodging or to assist with tuition. This is not considered payment of wages for the purpose of determining whether a student is an employee. Likewise, the fact that the employer may ultimately hire the student does not make the intern an employee as long as there was no promise of a regular full-time job made to the intern prior to or during his/her internship.
Does the Internship Meet "Trainee" Criteria?

Following are some points that generally hold true for meeting "trainee" criteria:

- The work is an integral part of the student's course of study.
- The student will receive credit for the work or the work is required for graduation.
- The student must prepare a report of his/her experience and submit it to a faculty supervisor.
- The employer has received a letter or some other form of written documentation from the school stating that it sponsors or approves the internship and that the internship is educationally relevant.
- Learning objectives are clearly identified.
- The student does not perform work that other employees perform.
- The student is in a shadowing/learning mode.
- The employer provides an opportunity for the student to learn a skill, process, or other business function or to learn how to operate equipment.
- There is educational value to the work performed, i.e. is it related to the courses the student is taking in school.
- A staff member supervises the student.
- The student does not provide benefit to the employer more than 50 percent of the time.
- The employer did not guarantee a job to the student upon completion of the training or completion of schooling.

References to internship are ubiquitous on the web. One is at Syracuse University as an example: ([http://internships.syr.edu/hosting-internships.html](http://internships.syr.edu/hosting-internships.html)). However, the explanation offered regarding internship provided by Rutgers University addresses compensation in clear terms relevant to a for profit sponsor.

Compensation

The question of whether or not to pay interns has a number of implications for employers. It may be of some help to consider the following when determining how to compensate your interns. The quality of an intern's experience need not be diminished simply because an internship is unpaid. However, the quality and number of available candidates for the hiring organization may be reduced because financial need prevents some highly qualified students from pursuing unpaid opportunities. In a for-profit organization it is common for employers to offer a stipend or hourly wage. The advantage of a stipend is that you can avoid adding short-term workers to the payroll. However, be sure to determine and satisfy any federal and state income tax requirements related to paying interns. In some fields like computer science and information systems, paid internships are the norm because of the specialized skills these students bring to the hiring organization. Students majoring in these fields are in demand and may have the luxury of choosing the best offer. In the not-for-profit sector, it is more common for internships to be unpaid. For the most part, students interested in working with not-for-profit organizations are aware that these may be volunteer positions. In the case of unpaid internships, it is typical for interns to work part-time so they can earn money through another job. Should you choose to use unpaid interns and you are a for-profit organization, be sure that your intern is considered a trainee under the Fair Labor Standards Act. Given the limited duration of internships, the out-of-pocket costs associated with compensating interns may produce a strong return-on-investment and "pay-out" over the long run in the form of lower recruiting costs and reduced turnover.
From employers surveyed, the following are salary ranges reported for Rutgers University student interns:

- **Computer Science/Engineering**: $12 - $25/hr.
- **Business**: $9 - $24/hr.
- **Liberal Arts**: $6 - $22

Various organizations, governmental and corporate and academic consult with companies about setting up internships, in essence, an ACPE program is precisely that. All six criteria for trainees (students) being met would disqualify the assignment of employee. That ACPE supports paying a stipend is fitting as every credible site argues for interns who are full-time. We do not pay our part-timers as is recommended. Some human resource leaders offer information about this subject like those in Virginia:

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Organizing an Internship Program. By the Society for Human Resource

A final item that is parallel is the one that exists between SITs and Teaching Assistants (TA) or Graduate Assistants (GA) in university educational programs. Recently, those at Harvard and in some other Ivy League Schools tried to form a union to get wage increases for the long hours they served. That was straightway defeated.

The National Labor Relations Board (NLRB) struck down a Clinton-Era ruling which allowed unions to "organize" university graduate teaching assistants (TAs) into union affiliation. The union, of course, wanted them to pay union dues to remain "organized." Specifically, the United Auto Workers (UAW) union was trying to forcibly unionize TAs at Brown University. The NLRB voted to return to the long-standing position of more than 25 years that TAs have an academic, rather than economic, relationship with universities, and that TAs are not "employees." The NLRB found that, because TAs are admitted into, rather than hired by universities, they are students in, rather than employees of, the institution. The National Right to Work Committee said, "While some students may have Marxist dreams that they are workers, rather than students, who will be in the vanguard of an economic revolution when the workers of the world unite, the fact remains that they are students and not employees, and have little commonality of interest with most employees."

I hope this helps. I will be glad to speak to anyone illustrating how the ACPE program conforms to all 6 of the criteria that the DOL itself sets in terms of qualification to be a "student" or internship program.

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