

Blog Post

The Do's and Don'ts of Internships

June 5, 2025

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It's that time of year again. Tens of thousands of high school, college, and graduate students will descend on employers this summer, looking to gain practical work experience in the various fields in which they have interest. Employers hosting interns this summer, or considering it in the future, need to be aware that hosting interns can present a variety of potential legal issues. Being aware of these issues could be the difference between a positive experience for both intern and employer and a potentially costly legal crisis. Thus, employers need to know the “do's and don'ts” of hosting internship programs when the new talents arrive this summer.

1. Do we have to pay our interns?

One of the most important considerations for employers is whether to pay interns. Whether an internship must be paid or not depends upon whether the internship **primarily benefits** the intern or the business. Under current Department of Labor (DOL) guidance, an intern need not be paid if the internship is intended to primarily benefit the intern rather than the employer. Conversely, if an internship primarily benefits the employer, then the intern must be paid. The DOL's Wage and Hour Division has a [seven-factor test](#) to evaluate whether an internship primarily benefits an intern or employer:

1. The extent to which the intern and the employer clearly understand that there is no expectation of

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compensation.

2. The extent to which the internship provides training similar to the training provided in an educational environment, including clinical and other immersive training provided by educational institutions.
3. The extent to which the internship relates to the intern's formal education program, whether through integrated coursework or the receipt of academic credits.
4. The extent to which the internship accommodates the intern's academic commitments by aligning with the intern's academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts will weigh each factor in light of the individual circumstances, and no one factor is dispositive. Not every factor is required to point in the same direction for the court to still conclude an intern is not an employee.

To add complexity, states may also impose additional factors for employers to consider when they determine whether to provide an unpaid or paid internship. Some states solely consider the DOL's seven factors, while others may have more stringent requirements.

For example, a 2020 New York State court decision considered whether a paralegal who interned for at a law firm should have been paid. The firm had an agreement with the New York Paralegal School to

host student interns for about 300 hours of “site” work. Interns would receive experience in areas such as legal research, filing, and drafting, while assisting attorneys. In this case, however, the intern never signed the agreement. The intern later sued, claiming unpaid wages, overtime wages, unpaid vacation days, unpaid bonuses and unpaid medical insurance for work performed. The Court emphasized that in New York, whether an intern or is exempt from both the Fair Labor Standards Act and New York labor standards under the Minimum Wage Act also depends on additional factors, in addition to the factors already set forth in the primary beneficiary test:

1. The intern is notified, in writing, that she will not receive any wages and is not considered an employee for minimum wage purposes.
2. The intern does not receive employee benefits, including but not limited to health and dental insurance and discounted or free goods from the employer.
3. 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 only uses criteria relevant for admission to an independent educational program.
4. 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.

The court ultimately dismissed the plaintiff’s claims for unpaid vacation, medical insurance, and bonus compensation for the internship period because the intern had admitted that he had no expectation of such payments. The intern received neither wages nor education credit, and the record remained indeterminate as to the extent of the learning and training provided to the intern. However, the court allowed his claims for unpaid wages to survive because material issues of fact existed regarding the

manner in which the plaintiff received the internship and what terms it was under since the employee had not signed an agreement. A remaining issue was also the nature of the internship duties that were assigned to the intern and whether those duties were merely “educational” as defined by the DOL or had the effect of replacing the duties of other employees. Additionally, the intern alleged that he had been promised a salaried position after the internship, which was supported by his claims that he had been given more responsibilities, therefore suggesting the possibility that an employment relationship existed.

In contrast, in a 2024 New York federal district court case, a dental student sued the dentistry school where she had studied and performed clinical work. She had been participating in clinical work as part of her academic curriculum. Among other claims, she brought whistleblower retaliation claims under New York labor laws against the dentistry school claiming she was expelled for raising concerns about patient care and clinical practices. The court found, however, that the dental student was not an employee, and thus, could not assert the claim. In this case, the clinical work was part of the student’s academic program and was performed for academic credit. The court reasoned that, like interns and vocational students, the student did this work expecting to receive educational or vocational benefits not necessarily expected with all forms of employment. Additionally, because her clinical work was required to meet state or professional standards, these factors primarily benefitted her and not the dentistry school.

Similarly, in an Eleventh Circuit decision, an intern in the Miami-Dade County autopsy forensic photography training program claimed that she should have been a paid employee. The court held that the intern was not entitled to minimum wage or overtime payments under the Fair Labor Standards Act because she was an intern, not an employee. As the court went through the primary beneficiary

factors, it determined that the intern learned forensic photography from a highly regarded program for free and over a six month period, during which she gained considerable experience. The intern understood that she would not be paid and that she would not be entitled to the job with the county post-internship. She gained valuable practical experience and training from forensic photography professionals, and her role complemented those professionals' work. Furthermore, while the county received some benefit from the plaintiff's internship, it was not the primary beneficiary of the relationship.

2. Assuming that an internship is paid, what potential wage and hour issues can arise?

Generally, paid internships are considered employment, meaning that paid interns are subject to the same wage and hour laws as regular employees. Employers must pay paid interns at least the applicable minimum wage for all hours worked and overtime wages if they work over 40 hours a week. A paid intern who continues to work full-time after 90 days, may become eligible for certain benefits.

As usual, employers must be aware of state laws. State minimum wage laws can override federal minimum wage laws, so employers are required to follow the higher standard.

3. How do I provide a good experience for interns (and avoid a bad one)?

Generally, employers should evaluate whether the internship they are providing should be paid. It is crucial to determine the legal framework in the jurisdiction in which the intern will be brought to work. Depending on the state or local laws, there may be additional factors to consider in addition to the primary beneficiary test set out by the DOL. For unpaid internships, employers should create internship program policies and practice guidelines

so that the intern is the primary beneficiary of the internship. If an intern is a student, employers should structure the unpaid internship so that the intern is able to receive academic credit at their respective school or university, and align the duration and timing of internship programs with academic calendars. Particularly with unpaid interns, employers should communicate within the organization about what assignments are appropriate and ensure that their employees also understand the parameters of the work they are allowed to delegate to interns. Employers should also ensure that all employees and interns are aware of company culture, policies, and anti-harassment and discrimination laws. If you are hosting interns this summer and want to be sure your program is compliant, reach out to your Akerman labor and employment lawyer.

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