

Blog Post

DOL Eases Standards for Unpaid Internships

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With summer internships in full swing, it's high time to revisit the Department of Labor's recently-revised guidance on unpaid internships. Guidelines issued in January abandoned the Department's prior test – which required employers to meet each of six factors — in favor of a seven-factor test granting employers more flexibility to implement unpaid internship programs.

Under the new “primary beneficiary test,” whether the internship is paid ultimately turns on whether the intern or the employee is the “primary beneficiary” of the internship. When the intern is the primary beneficiary, the internship need not be paid. In contrast, when an internship primarily benefits the employer, it must be paid.

While acknowledging that the test is “flexible,” guidance from the Wage and Hour Division sets out seven factors for the primary beneficiary test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment,

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including the clinical and other hands-on training provided by educational institutions.

3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the 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.

The foregoing is a significant departure from the prior test, and unlike the prior test, this new standard does not rigidly require an unpaid internship to satisfy every factor. Rather, the new test requires an individualized assessment of each internship to determine, on a case-by-case basis, whether the intern or the employee is the internship's primary beneficiary. This flexible approach affords employers the opportunity to consider the totality of the circumstances to determine whether an internship should be paid. In many instances, the first and seventh factors are best addressed in an internship offer letter, avoiding any room for ambiguity. While the remaining factors are more subjective, in many cases they can be addressed during the recruiting process and/or when designing the internship programs.

The Department's prior six-factor test required unpaid internships to satisfy *each* of the following: (1) the internship, even though it includes actual operation of the facilities of the employer, is similar

to training which would be given in an educational environment; (2) the internship 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.

It bears noting that the primary beneficiary test applies only to “for-profit” employers; unpaid public sector and non-profit internships are generally acceptable.

In light of these changes, employers should carefully evaluate their internship programs to ensure compliance. Where appropriate, employers should consider revising policies and other materials to more closely reflect the goals of their internship program and the factors set forth by the DOL. Employers should also consider implementing internship offer letters and other agreements with interns highlighting, at a minimum, whether the internship will be paid and whether there is any guarantee of future employment at the conclusion of the internship. Akerman’s Labor and Employment attorneys can assist with each of these steps.

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