A Closer Look at Paid vs. Unpaid Internships

With school starting and colleges in session, many employers are thinking about the hiring of interns. While it’s true that internships can be a rewarding experience for both the intern and an employer, it is important to understand the differences between a paid and unpaid internship, as well as the factors that constitute each. Misclassification of an employee or intern can potentially have serious legal and financial consequences for employers, often resulting in penalties and fines, back pay, front pay, and unpaid overtime. Therefore, it is critical interns be classified correctly. Aside from the obvious, what are the differences between a paid internship and an unpaid internship, and as an employer, how do you decide if the intern is considered an employee?

The Fair Labor Standards Act, or FLSA, is a federal law which governs employment practices such as minimum wage, overtime, and recordkeeping. The FLSA defines the term ‘employ’ very broadly as including “suffer or permit to work.” This means that unless specifically exempted from the FLSA provisions, covered individuals must be compensated under the law for the services they perform for an employer. The FLSA does not however, specifically address an exemption for student interns. Such an exemption would be based upon the specific facts and circumstances surrounding the individual internship situation. In many cases, the Department of Labor has indicated that internships in a “for-profit” private sector setting will be viewed as an employment relationship for which the individual should be compensated for. This means that, interns who qualify as employees typically must be paid at least the minimum wage for all hours worked. In addition, they would also be entitled to overtime compensation for any hours worked over forty in a workweek.

There are however, some circumstances in which an individual can participate in a “for profit” private sector internship without compensation. Such a relationship would be considered a true unpaid internship. This most often occurs when a college or university exercises control over the internship program and the individual receives educational credit for completing the program. According to the United States Department of Labor, the following six criteria must be applied when making such a determination as to whether a true unpaid internship exists:

1. The internship, even though it includes actual operations of the facilities of the employer, is similar to training which would be received in an educational setting;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but rather works under close supervision of existing staff;
4. The employer that provides the internship 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 time spent in the internship.
If all of the above criteria are satisfied, an employment relationship is generally thought not to exist under the Fair Labor Standards Act. As such, the Act’s minimum wage and all overtime provisions would not apply to the intern. This exclusion from the definition of employment is quite narrow due to the fact that the FLSA’s definition of “employ” is very broad.

Generally speaking, the more an internship program is structured around a classroom or academic experience as opposed to the employer’s operations, the more likely the internship may be viewed as an extension of the individual’s educational experience. Additionally, the more the internship provides the student intern with general skills that can be used in multiple employment settings as opposed to skill that pertain to a particular employer’s operation, the more likely it is that the intern would be viewed as receiving training versus working as an employee.

For more information about the criteria for unpaid interns visit the U.S. Department of Labor’s site at: [http://www.dol.gov/whd/regs/compliance/whdfs71.pdf](http://www.dol.gov/whd/regs/compliance/whdfs71.pdf).

It is also important to note that there are some state-specific guidelines which may be more stringent than the federal provisions. When state and federal law differ, the employer should adhere to the law which is most beneficial to the employee or intern. Check your local state’s department of labor internship guidelines to be sure your intern classified appropriately.

As a best practice, if you are still unsure about whether an individual meets the criteria for an unpaid internship, consult with an employment attorney who can make such a distinction for you. Paychex is also here to help! ASO and PEO clients can contact their Human Resource Generalist for more information. HR Essentials and Employee Management Services clients can call and speak with one of our Human Resource professionals at: 800-472-0072 option 5, option 1.