



Internships – Paid or Unpaid?

If you are thinking of hiring an intern to help with your workload, first, know the rules. A common question when developing an internship program is whether an employer must pay an intern for his/her work.

As a general rule, a person hired as an **unpaid intern** must be a student enrolled in an accredited academic program and be receiving academic credit for the internship or be in a program approved by a public agency to provide training.

If an accredited program is not involved, the employer must then pay the “intern” at least minimum wage for all hours worked. Thus, the paid intern is also an employee, but does not need to receive the same benefits as other “regular” employees.

The federal Department of Labor (DOL) and California’s Division of Labor Standards Enforcement (DLSE) both have standards in regards to intern programs. The more stringent of the two laws are generally enforced by the courts and, as in most cases that is California law.

In California, in order to be exempt from the wage and hour requirements of the IWC Orders (i.e. unpaid), the intern’s training must meet all of the following four tests:

1. The training must be an essential part of an established course of an accredited school or of an institution approved by a public agency to provide training for licensure or to qualify for a skilled vocation or profession.
2. The program may not be for the benefit of any one employer.
3. A current (regular) employee may not be displaced by the trainee.
4. The training must be supervised by the school or a disinterested agency.

DLSE source: 46.6.6 **Intern Programs**

The DOL clarified their understanding of paid versus unpaid interns by creating a “primary beneficiary” test. If the employer is the primary beneficiary, then the intern must be compensated as an employee under the minimum wage provisions of the Fair Labor Standards Act (FLSA). An employer can always pay more than the minimum wage. If the intern primarily benefits from the relationship, the internship can be unpaid. California adopted the primary beneficiary test in *Benjamin v. B&H Education*.

The primary beneficiary test is a “flexible test” with seven factors and no single factor is determinative:

1. The intern and the employer clearly understand that there is no expectation of compensation. For example, any promise of compensation, express or implied, suggests that the intern is an employee.
2. The internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

CEA Recommendation: Carefully analyze unpaid internships. If in doubt, pay the minimum wage and save yourself a lot of headaches!