

Unpaid Interns May Be Entitled to Compensation Under Law

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

Thousands of enthusiastic students will find work as interns this summer. In today's economy, students are more accepting of unpaid internships than in years past. Nevertheless, an employer must resist the urge to view every intern as "free labor." In fact, unpaid internships may violate the Fair Labor Standards Act ("FLSA") unless certain enumerated factors established by the Department of Labor ("DOL") are satisfied.

Generally, the FLSA requires that an employee be compensated for all hours worked. An "intern" (as that term is defined by the DOL Standards), however, is not an employee under the Act. Consequently, an employer is not required to pay an "intern" in accordance with the FLSA's minimum wage and overtime requirements. But, calling someone an intern does not mean that the legal test has been satisfied to avoid having to pay that person.

The Wage and Hour Division of the DOL has developed the following six-factor test to establish whether someone qualifies as an "intern." All six factors must be met for a worker to qualify as an "intern":

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to what would be given in an educational environment;
2. The internship experience 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 the employer's 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.

If all of the above factors are met, then the person is an "intern," an employment relationship does not exist under the FLSA and the Act's minimum wage and overtime provisions do not apply.

Employers wishing to use unpaid interns should tailor their internships to comply with the DOL's six-factor test. If the employer cannot satisfy the DOL test, then the employer must compensate the person in accordance with the FLSA.

This client alert is for general information purposes and should not be regarded as legal advice.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax information contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.