Fact SHEET

Wage Requirements for Interns in For-Profit Businesses

The New York State Minimum Wage Act and Wage Orders contain the state's rules for pay and overtime. These rules are in addition to those required by federal law, including the Fair Labor Standards Act. This is a guideline to help decide if a for-profit business that has interns must pay them according to the state minimum wage and overtime rules. This only applies to the State Minimum Wage Act and Orders. It does not apply to Unemployment Insurance, Workers' Compensation, and/or any other law.

** Not-for-profit organizations and institutions of any type also may have unpaid interns, if they meet all the criteria for an intern who is not in an employment relationship.*

In general, an intern is only exempt from the requirements of the Minimum Wage Act and Orders if the intern is not in an employment relationship. To determine whether an employment relationship exists, the department uses six criteria from the U.S. Department of Labor and five criteria of its own to evaluate the situation.

An employment relationship does not exist only if the situation meets ALL of these criteria:

1. **The training, even though it includes actual operation of the employer's facilities, is similar to training provided in an educational program.**

   For example:
   - The internship program builds on a classroom or academic experience -- NOT the employer's operations.
   - A college, university, secondary school, specialist, technical, vocational or trade school oversees the program and awards educational credit.
   - The internship teaches skills that are useful in other jobs (not skills specific to one employer's operation).
   - The intern does not perform the routine work of the business on a regular basis, and the business does not depend upon the work of the intern.
   - The intern is not engaged in the operations of the employer and does not perform productive work (such as filing, other clerical work or helping customers).
   - The intern gains a new skill, advanced knowledge or better work habits.

2. **The training is for the benefit of the intern.**

   The intern must be the primary beneficiary of the training. Any benefit to the employer must be merely incidental. If the academic institution gives credit for the internship, it is considered some evidence of the beneficial nature of the program.

3. **The intern does not displace regular employees, and works under close supervision.**

   Interns do not function in ways that replace or augment regular staff.

   If interns do job shadowing to learn certain functions under the close and constant supervision of regular employees (but perform no or minimal work), then this is likely to be considered a true educational experience.

   However, if interns receive the same level of supervision as the employer's regular workers, it suggests an employment relationship, rather than training.

   Interns are considered employees if they substitute for regular workers or add to an existing workforce during specific time periods.

   Interns are viewed as employees if the company would need to hire additional employees or require existing staff to work more hours to do the interns' work.

4. **The activities of trainees or students do not provide an immediate advantage to the employer. On occasion, operations may actually be impeded.**

   The essence of a traineeship is that an employer provides a benefit to the trainees by developing their work skills or knowledge; the trainees do not benefit the employer.

   In a true traineeship, the employer cannot gain an immediate advantage from the intern's presence. In fact, in most circumstances, interns will require employers to dedicate resources (in the form of training, supervision, etc.) that may actually detract from the productivity of the worksite for some period.

5. **The trainees or students are not necessarily entitled to a job at the conclusion of the training period and are free to take jobs elsewhere in the same field.**

   The internship runs for a fixed period, set before the internship begins. It has no connection with any offer of employment or promise to stay with the employer.

   Employers should not use unpaid internships as a trial period for those seeking employment.

   Interns who are placed with the employer for a trial period, with the expectation that afterwards they will be hired as permanent employees, would generally be considered employees.

   The longer an internship lasts, the more likely it will be considered an employment relationship.

6. **The trainees or students are notified, in writing, that they will not receive any wages and are not considered employees for minimum wage purposes.**

   Such written notice must be clear and be given to the trainees or students before the internship or traineeship starts.

7. **Any clinical training is performed under the supervision and direction of people who are knowledgeable and experienced in the activity.**

   The persons who supervise or direct any clinical, hands-on work performed by the trainees must have sufficient experience and knowledge in that industry.

   Persons have "sufficient" experience and knowledge in the industry if they are proficient in the area and in all activities performed by the trainee. They must have adequate background, education, and experience to fulfill the educational goals and requirements of the training program. In addition, the persons must be competent to provide such training, with previous experience training employees or students.

8. **The trainees or students do not receive employee benefits.**

   Examples of such benefits include, but are not limited to:
   - Health and dental insurance
   - Pension or retirement credit and
   - Discounted or free goods and services from the employer

9. **The training is general, and qualifies trainees or students to work in any similar business. It is not designed specifically for a job with the employer that offers the program.**

   Skills offered through the training must be:
   - Useful
   - Transferable to any employer in the field and
   - Not specific to the for-profit employer offering the training

   Any training that is specific to the employer and its operations is conclusive evidence that an employment relationship exists.

10. **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.**

    This helps to ensure that employers do not mix recruiting of employees and interns. These searches must run independently from one another.

    Educational institutions or other organizations should not consider employment-related factors when they place students with for-profit employers. They should only consider the needs of the student and the educational program.

11. **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.**

    This relates to the requirement that the employer tell trainees, in writing, that they are not entitled to wages for the training. This is to avoid a trainee's misunderstanding of the nature of the program, and/or an employer's misrepresentation of its nature, purposes and entitlements.

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P725 (4/11)
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