



Mineral



Question of the Week

March 27, 2024

Question

Do we need to pay summer interns?

ANSWER

Generally, yes, though it depends on who benefits most from their work.

The U.S. Department of Labor (DOL) has adopted the “primary beneficiary test” to determine whether a worker is an employee (who must be paid in accordance with federal wage and hour law) or can be classified as an unpaid intern (a non-employee who is exempt from federal wage and hour law). If the worker is the primary beneficiary of the arrangement—as opposed to the employer—they can be classified as an unpaid intern. If the employer is the primary beneficiary, the worker must be classified as an employee and must be paid minimum wage and overtime under the Fair Labor Standards Act.

To determine who the primary beneficiary is, consider the extent to which:

- The internship provides training that would be similar to what would be given in an educational environment, including clinical and other hands-on training provided by educational institutions.
- The internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
- The internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
- The internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.

- The intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- The intern and the employer understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee.
- The intern and the employer understand that the internship is conducted without entitlement to a paid job at the end of the internship.

According to the DOL, the test is flexible, and no single factor will necessarily tip the scales. But as a practical matter, if having summer interns is saving your company money or the interns aren't receiving some kind of academic credit, you should think very hard about classifying them as non-employees.

If you're not sure whether the worker should be classified as an unpaid intern or paid employee, the safer option would be to classify them as an employee. Misclassification can be costly. And as is always the case, you should check state law for any additional requirements.

This Q&A does not constitute legal advice and does not address state or local law.