

Summer Interns, Paid or Unpaid?

By Scott Mirsky

SUMMARY: Employers must be cautious when evaluating their obligation to pay summer interns. If the employer can satisfy the “primary beneficiary test” then the intern can work without pay. However, if the intern is performing job duties unrelated to the intern’s formal education program and the work performed by the intern displaces other workers, then the intern should be paid as an employee.

This is the time of the year when businesses hire summer interns. While many businesses are willing to open their doors and “mentor” a student who is eager to learn about a profession, these businesses are not so excited about paying an intern who does not have the skills to fully assist the business. Thus, many businesses wonder if they can have the intern work for free? Yes, if the so-called “primary beneficiary test” can be satisfied. This test determines which party is the “primary beneficiary” of the intern-employee relationship by analyzing seven factors:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee - and *vice versa*.
2. The extent to which 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 extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the position provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

No single factor is determinative, as courts have described the test as “flexible.” To satisfy this test, we suggest the following tips:

- Communicate the intern-employer relationship in writing;
- Do not promise any compensation;
- Work with an academic institution;
- Limit the internship to the summer period;
- Do not have the intern perform work that would ordinarily be performed by your employees;
- Do not promise future employment to the intern; and
- The focus of the internship must be educational.

If an intern-employer relationship cannot satisfy this test, then the intern should be treated as an “employee” and all applicable employment laws must be followed, including minimum wage and overtime requirements. The employment attorneys at Paley Rothman are available to assist your business evaluate if an intern should be paid or unpaid.