

## When It Comes to Interns: To Pay or Not to Pay, That is the Question

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So you want to hire an intern. That's great—the benefits for both employer and intern can be many and outweigh any potential risks. Whether hiring an intern, or having an intern program, is economically viable for your business often depends on whether the interns must be paid. Both are options, but under both federal and New Jersey State law, an internship program must meet certain criteria in order for an employer to be exempt from paying its interns.

### Federal Law Under the Fair Labor Standards Act

Under the FLSA, the federal law which governs the payment of wages, the key determining factor is the nature of the work relationship. A work relationship is most likely to be recognized as an internship if it is primarily for the benefit of the intern and not the business, and provides training which is similar to that which would be provided in an educational environment. An intern must work under the close supervision of workplace staff. Although under federal law, it is not a separate requirement that the intern be enrolled in an educational institution, if he or she is so enrolled, the more oversight provided by the educational institution supervising the internship program, the more likely the work situation will be viewed as an internship. It is also more likely that the intern will be viewed as receiving educational training—and therefore need not be paid—if the work relationship provides the intern with skills that can be used in multiple settings, as opposed to skills particular to one employer's operation.

The mere fact that the employer may be receiving some benefits from an intern does not disqualify the internship from being unpaid. However, an intern cannot be crucial to a business, cannot displace regular employees and must not necessarily be entitled to a job at the conclusion of the internship.

### Additional Requirements Under State Law

New Jersey has similar requirements to those contained in the FLSA, but in New Jersey, in order to qualify as an unpaid intern, an individual *must* be enrolled in a "school-to-work program." A proper school-to-work program meets the following criteria:

1. The student must be at least sixteen years of age;
2. The internship must be related to a formal school-to-work transition plan for a student learner;
3. There must be collaboration and planning between worksite staff and school staff resulting in clearly identified learning objectives related to the internship;
4. Any productive work must be incidental to achieving learning objectives;
5. The student learner must receive credit for time spent at the worksite and the student is expected to achieve the learning objectives;
6. The student learner must be supervised by a school official and a workplace monitor;
7. The non-paid activity must be of a limited duration, related to an educational purpose and there must be no guarantee or expectation that the activity will result in employment; and
8. The student learner must not replace an employee.

For more information or questions regarding unpaid internships, please contact a member of the Employment Law team at Wilentz.

**Attorney**

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