

## The Department of Labor Issues a Fact Sheet for Unpaid Internships Under the Fair Labor Standards Act

The Department of Labor recently released Fact Sheet #71, which provides some clarification of its six-part used test to determine whether an unpaid intern is subject to overtime and minimum wage regulations under the Fair Labor Standards Act. The test, set forth below, remains unchanged from the test used previously by the Department. However, the issuance of the Fact Sheet and the information contained within it are both indications that the Department of Labor is increasing its efforts to regulate unpaid internships at for-profit companies.



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Each of the following criteria must be met for a program to be deemed an internship and not employment:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training that 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 its 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.

The Fact Sheet further explains these criteria, but the crux of the matter is whether the internship is truly to benefit the intern and not the employer. Overall, the internship should be an educational experience that supplements formal instruction and provides training that will benefit the intern in various future employment settings. The intern should be provided with shadowing opportunities, more supervision than employees, and various practical and informative experiences as part of the internship program.

Although stringent, these requirements can be met. Companies should carefully review existing internship programs and make any necessary changes to their programs in order to avoid potential issues with the Department of Labor. In order to further ensure compliance with the guidelines, companies should consider creating a written agreement with the intern. This agreement should discuss the terms of the internship including goals, tasks, and mutual expectations. The intern and site supervisor should both provide written evaluations of the program and the intern's experience at the conclusion of the internship.

Please contact one of our Employment Practices Liability Practice Group attorneys if you would like a copy of Fact Sheet #71 or if you have any other questions regarding Employment Practices Liability.

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