

U.S. DOL Adopts “Primary Beneficiary” Test to Determine Whether Unpaid Interns Are Employees

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In a move allowing increased flexibility for employers and greater opportunity for unpaid interns to gain valuable industry experience, the United States Department of Labor (“DOL”) recently issued [Field Assistance Bulletin No. 2018-2](#), adopting the “primary beneficiary” test used by several federal appellate courts to determine whether unpaid interns at for-profit employers are employees for purposes of the Fair Labor Standards Act. If interns are, indeed, deemed employees, they must be paid minimum wage and overtime, and cannot serve as interns without pay. The “primary beneficiary” test adopted by the DOL examines the economic reality of the relationship between the unpaid intern and the employer to determine which party is the primary beneficiary of the relationship. Unlike the DOL’s previous test, the “primary beneficiary” test allows for greater flexibility because no single factor is determinative.

Along with its announcement of this change, the DOL also issued a new [Fact Sheet](#) which sets forth the following seven factors that make up the “primary beneficiary” test:

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 internship 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.

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