

Updated DOL Guidelines Ease Requirement To Pay Interns

As summer approaches, employers gear up for internship programs. Employers often grapple with whether or not to pay interns. Notably, the United States Department of Labor issued guidance making it easier for businesses to create unpaid internship programs that comply with federal law. In order for the internship to be unpaid, businesses must ensure that the internship passes muster under the test set forth in the new guidance. Not all of the factors have to be met, but if they tend to show that the intern is the main beneficiary of the internship, it is more likely that the internship can be lawfully unpaid. Clear and effective documentation will help employers satisfy this test.

The factors may be summarized as follows:

- The intern understands that the internship is entirely unpaid and that there is no entitlement to a paid job after the internship.
- The internship provides training similar to what the intern would receive from an educational institution, and the intern receives academic credit.
- The internship program corresponds with the intern's academic calendar.
- The time period for the internship is only as long as required for the intern to receive beneficial learning (and is not an indefinite trial period for employment).
- No employee is displaced by the intern.

In order to make it more likely that a court would view the intern as the primary beneficiary based on these factors, so that the internship can be unpaid, employers should take the following actions.

First, work with schools so that interns can receive credit and to schedule the program to coordinate with the academic calendar.

Second, consider carefully what tasks will be assigned to the intern. Avoid assigning tasks that would typically be completed by a paid employee.

Finally, create documentation, such as an offer letter or an agreement that clarifies the intern's expectations. Identify the start and end date for the internship. Indicate that the internship is unpaid and identify what academic credit the intern should expect to receive (if any). Clarify that the intern should not expect a paid job at its conclusion.

Keep in mind that the new guidance only affects the analysis of whether internships can be unpaid under federal law. State and local laws may impose stricter requirements for internships to be unpaid.

KD attorneys are available to assist employers in determining whether their internship programs can lawfully be unpaid, and to create appropriate documentation.