

# PUBLICATION

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## Pitfalls of Unpaid Summer Interns

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**It is that time of year again....students will inundate the job market for the summer months. However, given the economic realities of fewer positions, more qualified demand for existing positions, and aging workers holding onto their jobs longer, students are increasingly turning to unpaid internships to bolster their resumes. If they cannot get paid, they might as well get experience.**

The temptation to utilize eager free labor can be tempting for employers, but as the summer internship season approaches, it makes sense to review the requirements of the Fair Labor Standards Act for unpaid internships.

The Department of Labor applies the following six criteria in determining whether an intern is entitled to minimum wage and overtime under the FLSA:

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

According to the Department of Labor, the internship must meet all six factors in order to qualify as exempt from the coverage of the Fair Labor standards Act.

The U.S. Court of Appeals for the 6<sup>th</sup> Circuit (covering TN, OH, MI, and KY) recently rejected the Department of Labor's six factor test. In *Solis v. Laurelbrook Sanitarium and School*, the Court said that the six factor test was too rigid. Instead it evaluated whether the internship was for the "primary benefit" of the student or the employer. In other words, the Court evaluated which party benefited more from the relationship, the intern or the employer.

Regardless of whether the six factor test applies or the "primary benefit," interns cannot be used as a source of free labor without running afoul of the minimum wage and overtime requirements of the FLSA.