

Important Considerations When Hiring an Intern

When hiring interns it is essential to keep in mind the standards set forth by various state and federal laws. Below are some sample questions to consider before hiring an intern. However, because of the complexity of the issues regarding status and pay, each employer should review its internship program with its legal counsel.

When can the internships be unpaid?

The Fair Labor Standards Act requires employers to pay employees at least minimum wage for all hours of work performed. One exception is if the worker is considered a “learner/trainer.” (The term “intern” is not used in the law.) The U.S. Department of Labor developed six criteria for determining whether a worker falls into this category:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the student;
3. The student does not displace regular employees and works under the close observation of a regular employee or supervisor;
4. The employer provides the training and derives no immediate advantage from the activities of the student. Occasionally, employer operations may actually be impeded by the training;
5. The student is not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the student understand that the student is not entitled to wages for the time spent training.

Sometimes it is difficult to interpret the fourth criterion. Interns are typically expected to participate actively in the work of the organization to make the experience educationally valid. If the employer derives some benefit from the student's service, that may not necessarily make the student an employee for purposes of wage and hour law. Ultimately, the experience should look more like a training/learning experience than a job.

How much, if anything, does an intern get paid?

- If the criteria stated above are not upheld, the intern must be paid the minimum wage or a higher hourly rate if qualified; the intern will then technically be considered an employee, according to the U.S. Department of Labor.

What are the steps that need to be taken when paying an intern?

- If the intern is to receive a stipend, the amount will be paid upon completion of the internship. The stipend amount and date of pay should be stated in a written contract or agreement;
- If payments will be made at regular intervals or on a pay period, the employer should check with the internal human resources professional or payroll professional to verify payment methods.

Does the company have to provide workers' compensation?

- Workers' compensation is provided to replace wages and medical care programs for an employee whose injuries or illnesses are work-related.

Does the company have to provide unemployment compensation?

- Typically, interns are not eligible to receive unemployment compensation because they are hired for an end-date position.
- The Department of Labor's Unemployment Insurance (UI) programs provide unemployment benefits to eligible workers who become unemployed through no fault of their own and meet certain other eligibility requirements.

What is the sexual harassment policy, and how do interns report an incident?

- The sexual harassment policy should follow the same guidelines as the policy provided for permanent employees. The policy and steps for reporting an incident should be shared with the intern during the orientation and explained in the company's manual.

What is the policy for international students? What is the insurance policy?

- The insurance policy will vary depending on the insurance company. Employers should consult with their insurance companies to determine if they need to be notified when an intern is hired.

This information is provided as a resource and should not be construed as legal advice for any particular situation. For specific legal advice, please contact your organization's legal counsel.