

Considerations Before Choosing an Internship at a For-Profit Business

Internships can be tremendous opportunities for students to observe how the “real world” operates. However, students should be aware of several important considerations when making a decision on where to pursue an internship.

This document serves to **empower students considering an internship with a for-profit company** to understand whether or not they should be considered employees, and therefore **eligible for compensation and other important employee protections**, under the Fair Labor Standards Act (FLSA) and Title VII of the Civil Rights Act of 1964.

According to the United States Department of Labor Wage and Hour Division’s 2018 update, “the FLSA requires ‘for-profit’ employers to pay employees for their work. Interns and students, however, may not be ‘employees’ under the FLSA- in which case the FLSA does not require compensation for their work”.

Our court system has established a seven-part test to help interns and employees determine if the work done by an intern qualifies them to be considered an employee



The 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.



Harassment

Furthermore, it is important for students considering an internship at a for-profit company to realize that if they are not classified as employees, **then they are likely not protected from discrimination and harassment** under Title VII of the Civil Rights Act (Heffernan, 2017). Thus, students seeking the maximum legal protection available should choose a paid internship, if possible.

It is a good practice to proactively communicate with interested for-profit companies so that you are aware of their policies and procedures regarding internships. **A preliminary discussion with a company representative before agreeing to an internship can answer unresolved questions about compensation and harassment.** Moreover, this proactive communication can also better align expectations between all parties regarding the scope of the intern's duties and responsibilities.

Topics that you may consider discussing include:

- Employment status: intern or employee?
- Compensation
- Attire
- Start and End Dates
- Scope of responsibility
- Safety and security information regarding the internship location or the potential activities you may be undertaking

References

Heffernan, E. (2017). "It will be good for you," they said: Ensuring internships actually benefit the intern and why it matters for FLSA and Title VII claims. *Iowa Law Review*, 102(4). Retrieved from: <https://ilr.law.uiowa.edu/print/volume-102/it-will-be-good-for-you-they-said-ensuring-internships-actually-benefit-the-intern-and-why-it-matters-for-flsa-and-title-vii-claims/>

United States Department of Labor Wage and Hour Division. (2018). Fact sheet #71: Internship programs under the Fair Labor Standards Act. Retrieved from: <https://www.dol.gov/whd/regs/compliance/whdfs71.htm>

