

Checklist for Unpaid Interns

THE PROBLEM

Federal and state government agencies charged with enforcing state and federal wage and hour laws take a dim view of employer use of unpaid interns. They view the practice as an employer's attempt to use internship programs to take advantage of free labor. Hence, the use of interns in the private sector is highly scrutinized and severely limited.

THE ONLY SOLUTION

Internship program must either (1) comply with the minimum wage and overtime provisions of the Fair Labor Standards Act and California Labor Code or (2) satisfy the requirements for exclusion from the FLSA and Labor Code. Use the following checklist to ensure that your internship program satisfies the requirements for exclusion from the FLSA and Labor Code and thus exclusion from pay requirements.

1. **Establish an internship program that:**
 - A. is for a fixed period of time.
 - B. provides training similar to an academic or vocational environment or is affiliated with a college or university for academic credit. Senior care providers who partner with a college or university to provide credit to interns will likely meet this element, but will still need to satisfy all other elements in this checklist.
 - C. teaches skills that can be used in multiple settings, not skills that are only applicable to the organization.
 - D. does not allow the intern to perform actual work for the organization and does not otherwise benefit the organization. This means the intern should not perform any work that a normal employee would perform. For example, the Department of Labor considers filing, performing other clerical work, and assisting customers as the type of work that would create an employment relationship. In the case of senior care providers, that term might include work that is normally done by a concierge such as answering phones at the front desk, or by an assisted living director or assistant, such as running and/or assisting residents with group activities.
 - E. does not allow the intern to perform the work of regular employees or otherwise displace regular employees.

2. **Establish the following internship hiring procedures:**
 - A. Extend an offer letter to the intern that (1) identifies a fixed duration for the internship; (2) makes clear that the intern will not be paid for the internship; and (3) makes clear that there is no guarantee of employment at the end of the internship.
 - B. Obtain a written acknowledgement of the offer letter and its contents from the intern.

3. **Establish the following oversight of interns during the internship program:**
 - A. Assign the intern to shadow a regular employee.
 - B. Supervise the intern closely throughout the internship program. Set up periodic evaluation to provide feedback and discuss progress.

This document is for informational purposes and is not intended to provide legal advice. Members should consult with their legal counsel before instituting any intern program.
