

Legal Alerts

Interns & Volunteers: Do We Really Have to Pay Them?

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Now that summer is here, many workplaces find new faces in the hallways: students eager for work experience. Some are willing to donate their time to gain practical experience, others wish to support a worthy organization, and still others are focused on adding to their resume. But can the organization accept the efforts of these students without paying them?

Do we have to pay our summer interns?

As a general rule, the organization must pay all persons it "employs," which is broadly defined to mean "suffer or permit to work."

Nonprofits and public sector organizations usually are permitted to offer unpaid internships, even if the intern provides services of value to the organization.

The situation with for-profit entities is different. The company first must determine whether the intern is participating in a training program (and therefore not entitled to compensation) or is simply "employed." Before permitting unpaid interns or trainees, the US Department of Labor requires the company to meet the following criteria:

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.

If the company fails to satisfy any one of these requirements, the worker is considered an employee and must be paid at least minimum wage.

Do we have to pay our volunteers?

Nonprofit and public sector organizations may have volunteers as long as the volunteers are not employees of the organization and give time and services gratuitously. There can't be any pressure or coercion to donate time, and all services must be free and voluntary.

For-profit companies cannot have volunteers. Companies must pay at least minimum wage to anyone who is permitted to work.

The US Department of Labor has offered guidance on volunteers, and the Washington Department of Labor & Industries has even more complete [information](#).

Can we encourage our employees to volunteer their time, either to our organization or to other organizations?

It depends. Of course all volunteers must give their time freely, and they can't be coerced or forced to participate.

A non-profit employer need not pay employees for volunteer activities so long as the volunteers perform duties that are not similar to their paid job and the employer doesn't control the activity. However, if the employer requires or controls the volunteer work, and the activities benefit the employer, the employer may need to pay for time spent on the activities. Also, if employees on their own volition perform volunteer activities that are related to their job, and the employer knew or should have known that the employees would be participating, the employer may be required to pay for the time. For example, a charity can't require or allow a bookkeeper to voluntarily process payroll, if that is the kind of work that he completes in his paid position. However, if the bookkeeper decides on his own to hand out t-shirts at the annual 5K race, he probably would not have to be paid.

According to the Department of Labor, public sector employees can't volunteer to do work that is similar to their paid job within the same jurisdiction where they work, although they may volunteer to do similar work in different jurisdictions or different kinds of work in the same jurisdiction. For example, a bus driver for the Auburn public schools could not volunteer to drive an extra shift at her elementary school for no pay. However, she could donate her time to drive for a class trip in the SeaTac schools. Or, if the driver prefers to spend her free time closer to home, the Auburn schools would not be obligated to pay her for volunteering to help restore a playground.

Private sector employees can volunteer in nonprofit and public sector in jobs that are similar to the work that they are paid to do in the business world. For-profit companies can never have volunteers doing company work without pay.

Can we give our unpaid interns and volunteers gift cards or stipends?

Yes. Volunteers and unpaid interns for nonprofit or public sector organizations can receive stipends or other nominal fees or gifts, as long as the gifts are not tied to productivity. Monthly or yearly stipends are fine, too, as are reimbursements for expenses.

However there is a limit. If volunteers are paid more than a reimbursement for expenses, reasonable benefits or a nominal fee, the nonprofit might start to establish an employment relationship with the volunteer that would be subject to minimum wage requirements. The Department of Labor has defined "nominal fee" as 20% or less of what an employee doing the same work would make. For example, a custodian who serves as a coach for the varsity track team can receive a stipend for his work without losing volunteer status, as long as the stipend is 20% or less of what the school would have to pay an employee to do the same work. Note also that employers also may need to withhold taxes for stipends that exceed \$600.

If you have questions about paying interns or volunteers, please contact our Employment & Labor attorneys.

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