

No Such Thing as a Paid Intern, Says Washington State Department of Labor & Industries

Did you know that July 29 was National Intern Day? Well, Washington's Department of Labor and Industries (L&I) does and, in recognition, L&I recently released a [bulletin](#) reminding employers that sometimes a so-called intern is actually just another employee. L&I defines an intern as someone who participates in work-related learning through hands-on experience and who may perform work legally exempt from wage and hours laws so long as the circumstances surrounding the intern's work activities don't render him or her an employee under the law. That is, if an intern does hands-on work but is not treated like an employee, then the intern need not be paid like an employee. Internships are generally seen as mutually beneficial arrangements whereby interns can gain valuable experience and build transferable skills in a real-world work setting while companies can discover new talent, burnish their brand among jobseekers, and bring new perspectives to the table. But some observers decry unpaid internships as unfair to the interns being asked to do real work (to gain real experience) essentially for free. So, can your company strike a middle ground—paying an intern *something*, but not everything you'd pay a "real" employee? Not according to L&I. L&I notes that Washington's test for determining when an intern is in fact an employee mirrors the flexible "primary beneficiary test" employed by the Department of Labor under the Fair Labor Standards Act.^[1] The test weighs several non-determinative factors in deciding whether an intern is in fact an employee under the law—the very first of which concerns the expectation of compensation:

- 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.
- 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.
- The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
- The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
- The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
- 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.
- 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.

L&I warns employers that, while they may cover expenses by way of a stipend or reimbursement, they categorically cannot compensate their interns with regular pay. Essentially, according to L&I, there is no such thing as a paid intern in Washington. "But wait," you say. "I know there are paid interns in Washington. I *was* a paid intern in Washington!" Perhaps, however, you were actually an employee with the *job title* of "intern." Regardless, the point for employers is this: if you want to pay your interns a wage or salary, feel free to do so. Just don't make the mistake of thinking you can pay a wage or salary less than the law requires for other employees. As for that stipend, Washington employers considering any form of internship program are advised to work with experienced counsel to avoid running afoul of the state's wage and hour laws.

[1] See U.S. Dep't of Labor, [Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act](#) (Jan.

2018).

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