
Unpaid Internships: Federal Law Evolving, Garden State Unchanged

By Vanessa M. Kelly / Feb 06, 2018

In January, the Department of Labor announced that it would use a new method to determine whether interns or students working for non-profit organizations should be paid under the Fair Labor Standards Act. The DOL's new analysis will focus on six factors and is meant to be flexible without any one factor being determinative of the relationship. The test is referred to as the "primary beneficiary test" and looks at the "economic reality" of who really benefits from the internship – intern or employer. If the employer is the primary beneficiary, the relationship is much more likely to be deemed as a traditional employee/employer arrangement requiring compliance with wage and hour laws including minimum wage and overtime.

While federal law may be changing, New Jersey's wage and hour law has not changed. New Jersey has a strict standard to meet for interns. To qualify as a valid internship in New Jersey, the employer must satisfy all the following criteria for the unpaid arrangement:

- the program must be part of a school to work program;
- the intern must be at least 16;
- there must be close collaboration between the worksite and school;
- productive work is only incidental to learning objectives;
- there must be supervision by the school and a workplace mentor;
- the unpaid work is of limited duration and there cannot be any guarantee of employment after the internship ends; and
- the student worker cannot displace a paid employee.

Top Tip:

Misclassification is serious. An organization may end up paying fines, penalties and owing wages and benefits to those affected. If you need assistance structuring your internship programs, or need help generally with wage and hour compliance, please feel free to call upon us.

If you have questions regarding the content of this alert, please contact Vanessa Kelly (vkelly@clarkhill.com; 609-785-2926).