



State of Rhode Island and Providence Plantations

Common Legal Questions about Interns *

Q. What is the nature of the relationship between interns and employers?

A. Under state and federal law, an intern may be viewed either as a “trainee” or an “employee”, depending on the relationship between the intern and the employer (see criteria below).. If an intern performs work like other employees, and is supervised and directed like other employees—the intern may be viewed by the courts as an employee, regardless of whether or not the individual is paid. Interns who are deemed to be employees, are entitled to the same protections as other employees. However, interns who are deemed to be trainees are not considered to be employees, and are, therefore, not entitled to the same protections as employees. This is so regardless of whether the intern is paid or unpaid.

Q. Does the law require an organization to pay interns?

A. Interns who function primarily as employees must be paid; however, interns who function primarily as trainees (see criteria below) are not employees and, therefore, may be unpaid. However, employers must be aware of and ensure compliance with the Fair Labor Standards Act and the Rhode Island Minimum Wage Law, before classifying interns as unpaid “trainee[s].” If an intern is considered an “employee” for purposes of the FLSA or the RIMWL, then the employer must pay its interns at least the Rhode Island minimum wage.

“Employee” is defined by the Fair Labor Standards Act as “any individual employed by an employer.” Under the FLSA, to “employ” means “to suffer or permit to work.” Since this definition is somewhat circular, the Department of Labor’s Wage and Hour Division developed a six-factor test for determining whether workers are to be considered “trainees” or “employees” under the FLSA. The following is based on this test:

Test	Trainee (Not paid)	Intern (Paid employee)
Type of Training	The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.	The training approximates that which would be given to any new employee.
Who benefits	The trainee.	The employer.
Need for the Work	The trainees do not displace regular employees, but work under close observation	Work given to the intern would be done by other employees in their absence or by others hired to do it.
Impact of Work on Employer	The employer that provides the training derives no immediate advantage from the activities of the trainees and on occasion the employer’s operations may actually be impeded.	The employer’s position is advantaged due to contribution of the intern’s work.
Prospect of hire	The trainee is usually not offered a job at the completion of the training period.	The intern may be considered for full-time employment following the work assignment.
Prior understanding	The employer and the trainee understand that the trainees are not entitled to wages for the time spent in training.	The intern understands they will be compensated for their work.

*NOTE: For more information on the FLSA and interns, see the U.S. Department of Labor Wage and Hour Division Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act.

Q. Can interns be classified as independent contractors or volunteers?

A. When an employer hires an intern, the employer exercises control over “the result to be accomplished and means and manner by which the result is achieved.” If the employer exercises too much control, the worker is deemed to be an employee, not an independent contractor. Because of this (although there are some other considerations), the courts are apt to consider the intern an employee, not an independent contractor. Classifying interns as “volunteers” is equally problematic. The United States Department of Labor regulations define a “volunteer” as an individual who provides services to a public agency for civic, charitable, or humanitarian reasons without promise or expectation of compensation for services rendered. Because of the nature of internships, most interns’ work assignments will not fit that definition.

Q. Are interns considered employees for purposes of state and federal discrimination laws such as sexual harassment, ADA, race, and religion?

A. Interns who meet the definition of an employee will be considered employees for purposes of Rhode Island and federal discrimination laws. Therefore, covered employers should assume that their interns are employees and comply with applicable discrimination statutes, such as Title VII, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the Rhode Island State Fair Employment Practices Act. That said, interns who are not deemed to be employees, might nonetheless be protected by state and federal discrimination laws under other legal theories.

Q. Is an intern entitled to unemployment compensation?

Interns are generally not entitled to unemployment compensation after completion of an internship as the work experience is a temporary assignment which is not covered under Rhode Island unemployment compensation law.

Q. Are interns covered under workers’ compensation?

If an intern, who is paid a wage, is injured while on an employer’s premises, his or her sole recovery would be under Rhode Island’s workers’ compensation statute. Absent such coverage, an intern can seek compensation under general tort remedies.

Q. May interns be required to sign nondisclosure agreements?

Because interns are generally provided with unlimited access to an employer’s business, it is not unusual for a company to require interns to sign a nondisclosure agreement upon the commencement of the work assignment. Employers are generally advised to have interns sign such agreements to protect their organizations’ interests, including the confidentiality of documents and information mandated by law. Because most interns have limited, if any, experience in the work force prior to the internship, the impact of the nondisclosure agreement may escape them. Therefore, it is recommended that employers carefully explain the impact and legal ramifications of the nondisclosure agreement to the intern at the time it is provided.

**These statements are presented as guidelines and should not be taken as professional, legal opinions. Acknowledgments go to Benedictine University for their helpful guideline.*