



Unpaid Internships 101

INTRODUCTION

What is an internship?

An internship is work-related learning for individuals who wish to have hands-on work experience in a certain occupational field.

What determines an employment relationship with trainees or interns?*

As the state and federal definitions of “employ” are basically the same, the Department of Labor & Industries (L&I) looks to the U. S. Department of Labor (USDOL) Fair Labor Standards Act for certain training conditions exempted from the wage and hour laws.

Under certain conditions, individuals without an expressed or implied compensation agreement may work for their own advantage on the premises of another and not necessarily be employees. Whether trainees are employees depends on all the circumstances surrounding their activities on the employer’s premises.

If **all** six of the following criteria are met, the trainees are **not** considered employees:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in an educational environment or vocational school.
2. The training is for the benefit of the trainee.
3. The trainees do not displace regular employees, but work under their close supervision.
4. The business that provides the training derives no immediate advantage from the activities of the trainees, and may in fact be impeded.
5. The trainees are not necessarily entitled to a job at the conclusion of the training period.
6. The trainees understand they are not entitled to wages for the time spent in the training.

THE FOLLOWING QUESTIONS HELP CLARIFY ELEMENTS OF THE CRITERIA LISTED ABOVE:

What does it mean to be similar to an “educational environment”?*

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer’s actual operations, the more likely the internship will be viewed as an extension of the individual’s educational experience. For example, this often occurs when a college or university oversees the internship program and provides educational credit.

The more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer’s operation, the more likely the intern would be viewed as receiving training.

Under these circumstances, the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the work of the intern.

If the interns are engaged in the operations of the employer or are performing productive work that benefits the employer (for example, filing, performing other clerical work, or assisting customers), then interns may be entitled to the benefits provided under the wage and hour laws, even if they also derive other benefits from this type of placement.

What are the displacement and supervision criteria?*

The following examples provide guidance for when the requirements of the Minimum Wage Act, Chapter 49.46 RCW, applies:

- If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods; or
- If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled to compensation.

Job shadowing opportunities that allow an intern to learn certain functions under the close and constant supervision of regular employees, but where the intern performs no or minimal work, are more likely to be viewed as a bona fide education experience.

What does the term job entitlement mean?*

The following conditions indicate an unpaid internship:

- The internship is of a fixed duration, established before the start of the internship.
- Unpaid internships are not used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period.

*The questions above were adapted from the USDOL Fact Sheet on Unpaid Internships, online at www.dol.gov/whd/regs/compliance/whdfs71.htm.

HIGH SCHOOL STUDENTS IN WORK-BASED LEARNING PROGRAMS

What constitutes paid or unpaid work for high school students in a school-to-work program?

Students may be placed in a school-to-work program on a paid or unpaid basis. If all of the following criteria are met, L&I will not require payment of minimum wage. If all five requirements are **not** met, the business must pay minimum wage, as required by the Minimum Wage Act:

1. The training program is a bona fide program certified and monitored by the school district or the Office of the Superintendent of Public Instruction.
2. A training plan exists that establishes a link to the academic work; for example, the training plan could be a detailed outline of the competencies to be demonstrated to achieve specific outcomes and gain specific skills. The worksite effectively becomes an extension of the classroom activity and credit is given to the student as part of the course.
3. The school has a designated district person as an agent/instructor for the worksite activity and monitors the program.
4. The worksite activity involves students observing, work shadowing, or watching demonstrations, with students doing no substantive production or benefit to the business. The business has an investment in the program and actually incurs a burden for the training, and supervision of the student offsets any productive work performed by the student. Students may not displace regular workers or cause regular workers to work fewer hours as a result of any functions performed by the student.

5. The student is not entitled to a job at the completion of the learning experience. The parent, student, and business all understand the student is not entitled to wages for the time spent in the learning experience.

If a minor student is placed in a **paid** position, all requirements of the Minimum Wage Act, the Industrial Welfare Act, and child labor regulations must be met.

WORKERS' COMPENSATION COVERAGE

When are employers allowed to have volunteers?

Volunteers are permitted for non-profit, governmental, charitable or educational organizations.

For-profit businesses don't have volunteers. Instead, they may have:

- Qualified student volunteers in a school-sponsored program (grades K-12 or institutions of higher education)
- Unpaid students participating in a work-based learning program in an institution of higher education, for which the student receives credit (not wages) toward completing a program, certification, or degree in return for services.

For more details about criteria for a qualified student volunteer or unpaid student, go to Volunteers and Workers' Comp Coverage (www.Lni.wa.gov/ClaimsIns/Insurance/Learn/Volunteers).

What type of workers' compensation coverage is available for student volunteers or unpaid students?

Medical aid only benefits are available to businesses and organizations utilizing qualifying student volunteers and unpaid students. The elective coverage does not include the other usual benefits of workers' compensation, such as wage replacement, vocational and retraining costs, permanent partial disability payments, or death benefits. The business or organization electing the coverage is not protected from civil liability.

For more information, see Student Volunteers and Workers' Compensation Coverage (www.Lni.wa.gov/IPUB/213-023-000.pdf).

To obtain this coverage for student volunteers and unpaid students, complete the Application for Elective Coverage of Excluded Employments, which is available at Application for Elective Coverage of Excluded Employments (www.Lni.wa.gov/FormPub/Detail.asp?DocID=1562).

Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 360-902-5797. L&I is an equal opportunity employer.