

THE LAW OFFICES OF ALEX W. CRAIGIE

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Avoid The Perils Of Un(der) Paid Summer Interns

As we greet Summer, employers may be tempted to offer internship programs to provide students and others valuable real-world experience in their industry. An internship can be a terrific opportunity for both the intern and the employer. However, unless the intern is paid and treated exactly like other employees, in compliance with wage-hour laws, *for-profit* employers may be violating the law and risking a costly claim or lawsuit.

The U.S. Department of Labor (DOL) has provided the following six-part test *for-profit* employers should use in evaluating whether they can offer an unpaid internship program without violating wage-hour laws:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training that 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 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.
6. The employer and the intern both understand that the intern is not entitled to wages for time spent in the internship.

The DOL has said that, if *all six factors* are met, then an employment relationship does not exist under the Fair Labor Standards Act (FLSA).

What About Nonprofits?

The DOL has said that this six-part test for unpaid interns applies to *for-profit* employers, and that the FLSA recognizes an "exception" for "individuals who volunteer their time, freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to non-profit organizations." This is consistent with California Labor Code Section 1720.4.

However, nonprofit organizations using interns or trainees, should avoid paying the individual a *stipend*, unless it is sufficient to meet the otherwise applicable minimum wage requirements. While it may be appropriate to reimburse interns or trainees for certain out-of-pocket expenses, a stipend below the minimum wage suggests the intern or trainee is actually an underpaid employee, and can expose the organization to wage-hour liability.

Workers' Compensation?

Both *for-profit* and nonprofit organizations that otherwise legally use unpaid interns should still take steps to reduce their exposure in the event an intern suffers an on-the-job injury. It is wise to review the organization's workers' compensation insurance policy to ensure the organization is covered in the event of an accident or injury.

Employers planning to use unpaid interns or trainees are wise to consult with a knowledgeable employment law attorney.

With locations in Los Angeles and Santa Barbara, **The Law Offices of Alex W. Craigie** helps Central and Southern California employers prevent, manage and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451 or at Alex@CraigieLawfirm.com.

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