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UNPAID INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

In this current economic climate, unpaid internships are becoming more frequent. It seems like the ideal situation: employers are able to get free labor and reduce their expenses, while interns are able to gain experience, learn about different fields of employment and include substantial work experience on their resumes. However, in many cases this arrangement is in violation of wage and hour law.

The Fair Labor Standards Act (“FLSA” or the “Act”) is a federal statute that regulates employment. The FLSA requires a minimum wage be paid to employees of companies. The Act defines “employee” very broadly as individuals who are “suffered or permitted” to work. An individual must be compensated for the work performed on behalf of his or her employer. As a general rule, interns at “for profit” private sector companies are employees under the Act and therefore must be paid at least minimum wage and overtime compensation if they work over forty (40) hours in a workweek.

An exception to the general rule of paying employees at least a set minimum wage applies where certain conditions are met. Unpaid internships are allowed if **all** of the following six (6) factors are present:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which 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;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the above factors are met, then FLSA's minimum wage and overtime provisions do not apply because an employment relationship does not exist under the Act. If all six factors are not met, an intern must be compensated at least minimum wage for his or her work while at the company.

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