

# Regarding unpaid internships

Suppose a 16-year old high school student contacts your newsroom and asks if they could work as unpaid intern to get some experience and some clips. Eager to nurture future reporters and help a local kid, you want to say “yes.”

But should you? A Hotline call a few weeks back prompted me to look into unpaid internships in Missouri, and the result is this column: What are some of the legal considerations of using students for unpaid internships?

First, there are both Missouri and federal laws that control how an unpaid internship must be offered, and under what conditions a minor can be employed.

## Let's start with the feds

Unpaid internships are subject to more scrutiny by the Department of Labor than paid internships. The idea is that the government wants to safeguard against exploitation, so if the internship is unpaid, the feds will take a hard look on whether the intern is deriving a benefit.

The safest approach is likely to simply make the internship a paid internship, even if the pay is simply minimum wage. However, an internship can be unpaid if, under the Fair Labor Standards Act (FLSA), the “primary beneficiary” of the internship is the intern, not the employer.

Otherwise, the intern must be paid.

Courts apply the following 7-factor test (flexible, you don't need every factor) to determine whether a given unpaid internship benefits the employer or the intern:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee – and vice versa.

2. The extent to which the internship provides training similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

3. The extent to which the internship

is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.

4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.

6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

No one of these factors is dispositive. And there are no guarantees. But here are some considerations.

You might have the intern (and the intern's parent) acknowledge in writing prior to the beginning of the internship that the position is unpaid and there is no promise of compensation or future compensation or any job at the conclusion of the internship, the internship is limited to a specific period (the shorter the better) that would enable the intern to benefit from the program, and that they have reviewed the description of the program.

Next, think about typing up a description of the internship that includes the following:

(1) The clinical and hands-on training the intern could expect to receive that would be similar to what one would learn in journalism school, i.e., accompanying and assisting the editor and reporter in news gathering, writing and editing.

(2) If feasible, with input from the intern's teacher, indicate which of the student's courses your training might complement (such as English or yearbook or newspaper, etc.). The ideal situation would be where the student can complete a project at your

paper that also counts as work for one of their school classes.

(3) State a specific time period for the internship and tie the time commitment to the student's academic calendar, emphasizing that school comes first and the internship is only meant to complement their schooling. The shorter the term the better.

(4) State the intent and purpose of the internship (which would be to give a student a chance to learn more about the profession).

The foregoing might reduce the risk of running afoul of the Department of Labor; however it will not eliminate the risk. If the intern can be paid – even minimum wage – then the multi-factor test does not come into play.

## Now to child labor laws

Missouri's Child Labor Law imposes strict conditions on the employment of minors under the age of 16. So, for the purposes of this column, let's assume the intern is 16 or older. Federal law does not limit what jobs a 16-year-old can work, except they cannot work jobs that the DOL considers “hazardous.”

There are only two possible “hazardous” tasks to be aware of: First, minors should not be asked to drive a motor vehicle on public roads while on the job – even if they have a driver's license. Second, they are not allowed to operate a printing press.

Finally, youth interns will also likely be protected from harassment under the Missouri Human Rights Act and Title VII. It would be prudent to let the intern know, as well as your employees, that they have the right to intern in a workplace that is free of harassment and discrimination, and where they can report that. You can put that information in the same acknowledgement form that you have the intern (and their parent) sign.



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