

Question:

We've been approached by some local college students who are volunteering to be unpaid interns. Can we bring them on without paying them?

Answer from Emily, PHR:

According to the U.S. Department of Labor, there are certain requirements that must be met when taking on unpaid interns. These requirements are intended to ensure that the intern is receiving a valuable learning experience rather than providing free labor. Be aware that workers cannot waive their right to be paid, even if they are begging to work for free to gain experience. Unless all the following criteria are met, the intern is an employee who must be paid the minimum wage and overtime, and receive all of the other protections guaranteed by federal and relevant state wage laws.

The Department of Labor uses the following six criteria to determine if someone is an unpaid intern:

- 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;
- The internship experience is for the benefit of the intern;
- The intern does not displace regular employees, but works under close supervision of existing staff;
- The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
- The intern is not necessarily entitled to a job at the end of the internship; and
- 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 factors listed above are met, an employment relationship does not exist under the Fair Labor Standards Act (FLSA), and the Act's minimum wage and overtime provisions do not apply to the intern. However, if the employer does not correctly classify the intern, then

unpaid wages, penalties, and tax issues could result. It is also important to note that a number of workplace protections (such as the ADA) apply to interns and employees alike.

And as is true when classifying any worker as a non-employee, you'll want to check state law for additional requirements. California, for instance, requires that the application process be different than it is for employees, that the internship be clearly advertised as educational rather than geared toward future employment, that the training is part of an educational curriculum (rather than just similar to one), that the training not be overly-specific to the employer, and that the intern receive no employee benefits.