

INTERNS:

A Basic Resource Guide for Employers

PREPARED EXCLUSIVELY FOR INTERNSHIPS.COM
by
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Important Notice

This resource guide provides an overview of frequently asked questions related to hiring interns. This document is provided for reference only. The information contained in this guide is subject to change and is not intended as, and should not be considered, legal advice. Specific questions about your situation should be directed to appropriate legal counsel.

** Paul, Plevin, Sullivan & Connaughton thanks Laurence A. Shapero of Riddell Williams P.S. for contributing content related to 401(k) plans and other benefits.*

About Paul, Plevin, Sullivan & Connaughton LLP

Paul, Plevin, Sullivan & Connaughton LLP is a law firm based in San Diego, California that specializes in the representation of private and public sector employers in discrimination, harassment, wrongful termination, wage & hour, trade secret, and other employment-related claims before state and federal courts and administrative agencies.

In addition to litigation, the firm's attorneys counsel employers on compliance matters, employment transactions, investigations and other day-to-day labor and employment law matters covering all fifty states. Paul, Plevin also has a portfolio of innovative training programs to assist employers with employee training in harassment prevention, investigations, effective management within the law, and other employment-related issues.

The firm's commitment to excellence has been recognized by its clients and peers. California Law Business named Paul, Plevin as one of California's top five defense-side labor and employment boutiques. For several years the firm has been named by Fortune 500 companies as a "Go To" firm for labor and employment law services in Fortune's annual survey of leading corporate legal departments.

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INTERNS:

A Basic Resource Guide for Employers

I. INTRODUCTION

Congratulations on making the decision that an internship program is right for your organization. One of the most important decisions when implementing an internship program is weighing the benefits of a paid internship program versus an unpaid program. The right answer may not be the same for every organization. That's why we commissioned this Resource Guide for Employers considering a paid or unpaid internship program. This document is designed to provide an overview of those frequently asked legal and human resource topics to help you manage an effective internship program for your organization.

II. GENERAL CONSIDERATIONS

When hiring an intern, it is important to ensure that both the employer and the intern clearly understand the terms of the relationship. To do so, employers should consider having interns sign internship offer letters that address the following:

- Whether the internship will be paid or unpaid.
- Whether the intern will be entitled to any benefits offered to regular company employees, such as health insurance, paid vacation and/or sick time, holiday pay, or participation in the employer's 401(k) plan.
- The duration of the internship.
- Whether successful completion of the internship will result in consideration for full-time employment or an actual job offer.
- The intern's obligation to maintain the confidentiality of the employer's confidential, proprietary, and/or trade secret information.
- Which company policies apply to interns, including for example, policies regarding codes of conduct, use of employer equipment, and, most significantly, anti-harassment policies; under applicable law, employers have an obligation to prevent and correct unlawful workplace harassment, including harassment by supervisors, employees, and third parties, such as clients, vendors, contractors and non-employee interns.

See appendices for sample internship offer letters.

III. PAID INTERNSHIPS

A. What is a “paid internship”?

In paid internships, interns are generally considered company employees who are entitled to receive the minimum wage for all hours in which they work, as well as overtime pay.

B. What is the “minimum wage”?

Under the Fair Labor Standards Act (“FLSA”), the federal law that establishes wage and hour standards, covered, non-exempt employees must be paid a minimum hourly rate of pay for all hours in which they perform work.

Most employees are covered by the FLSA. For example, the FLSA covers employees working for employers who have a gross annual volume of business of at least \$500,000, as well as employees working for smaller employers if they are engaged in interstate commerce or in the production of goods for commerce. In addition, the FLSA applies to employees of federal, state, and local government agencies, hospitals, and schools.

The current federal minimum wage is \$7.25 per hour. Many states also have minimum wage laws. In cases where an employee is subject to state and federal minimum wage laws, the employee is entitled to the *higher* of the two minimum wages.

The following states have the same minimum wage as the federal minimum wage:

ARIZONA	KENTUCKY	NORTH DAKOTA
DELAWARE	MARYLAND	PENNSYLVANIA
FLORIDA	MISSOURI	SOUTH DAKOTA
HAWAII	NEBRASKA	TEXAS
IDAHO	NEW HAMPSHIRE	UTAH
INDIANA	NEW JERSEY	VIRGINIA
IOWA	NEW YORK	WEST VIRGINIA
KANSAS	NORTH CAROLINA	WISCONSIN

* Current as of April 15, 2010

The following states do not have their own minimum wage laws; in these states, covered employees must be paid the federal minimum wage:

ALABAMA	MISSISSIPPI	TENNESSEE
LOUISIANA	SOUTH CAROLINA	

* Current as of April 15, 2010

The following states have different minimum wages than the federal minimum wage; if employees are covered by state and federal minimum wage laws, the minimum wage will be the higher of the two wages:

ALASKA	\$7.75/hour
ARKANSAS	\$6.25/hour
CALIFORNIA	\$8.00/hour (\$9.79/hour in San Francisco)
COLORADO	\$7.24/hour
CONNECTICUT	\$8.25/hour
DISTRICT OF COLUMBIA	\$8.25/hour
GEORGIA	\$5.15/hour
ILLINOIS	\$8.00/hour (\$8.25/hour effective July 1, 2010) (applicable to employers of 4+ employees, excluding family members)
MAINE	\$7.50/hour
MASSACHUSETTS	\$8.00/hour
MICHIGAN	\$7.40/hour (applicable to employers of 2+ employees)
MINNESOTA	\$6.15/hour (\$5.25 per hour if employer has annual receipts below \$625k)
MONTANA	\$7.25/hour (\$4.00/hour for businesses with gross annual sales of \$110k or less)
NEVADA	\$7.55/hour for employees with no employer-provided health insurance benefits; \$6.55/hour if employee receives employer-provided health insurance benefits
NEW MEXICO	\$7.50/hour
OHIO	\$7.30/hour (\$7.25/hour for employers grossing \$267k or less)
OKLAHOMA	\$7.25/hour for employers of 10+ full-time employees at any one location and employers with annual gross sales over \$100k irrespective of number of full-time employees; \$2.00/hour for all other employers
OREGON	\$8.40/hour
RHODE ISLAND	\$7.40/hour
VERMONT	\$8.06/hour (applicable to employers of 2+ employees)
WASHINGTON	\$8.55/hour
WYOMING	\$5.15/hour

* Current as of April 15, 2010

C. Does federal law provide any exceptions to the minimum wage for young workers or students?

Yes. The FLSA maintains special wage programs that allow certain individuals, including young workers and students, to be paid at wage rates below the minimum wage. Relevant programs include:

- **Youth Minimum Wage Program:** This federal program allows employers to pay employees under 20 years of age a minimum wage of \$4.25 per hour for 90 calendar days after they are first employed. After 90 days of employment, or when the worker reaches age 20 (whichever comes first), the worker must receive the minimum wage.
- **Full-Time Student Program:** This federal program allows retail or service establishments, agricultural employers, and colleges and universities to pay full-time students 85% of the minimum wage. To qualify for this program, employers hiring full-time students must obtain a certificate from the Department of Labor (“DOL”). In addition to reducing the minimum wage, the certificate limits the hours that students may work to 8 hours in a day and no more than 20 hours a week when school is in session and 40 hours a week when school is not in session. Once students graduate or finish school, they must be paid at least minimum wage.
- **Student-Learner Program:** This federal program allows high school students of at least 16 years of age enrolled in vocational education (e.g., shop courses) to be paid 75% of the minimum wage. To qualify for this program, employers must obtain a certificate from the DOL.

To obtain additional information about the full-time student program or the student-learner program, or to apply for such programs, contact the DOL’s Wage and Hour National Certification Team at 312-596-1795.

Note that, despite these federal programs, where individual states have not adopted similar exceptions under their state’s laws, the state minimum wage will apply if it is higher than the applicable federal minimum wage. To find out whether a particular state has adopted such exceptions, or to ask general wage and hour questions, employers may contact the following state departments:

ALABAMA	Alabama Department of Labor P.O. Box 303500 Montgomery, AL 36130-3500 (334) 242-3460 http://www.Alalabor.state.al.us/
ALASKA	Department of Labor and Workforce Development P.O. Box 11149

	Juneau, AK 99811-1149 (907) 465-2700 http://www.labor.state.AK.us/
ARIZONA	Arizona Industrial Commission 800 West Washington St. Phoenix, AZ 85007 (602) 542-4515 http://www.ica.state.AZ.us/
ARKANSAS	Department of Labor 10421 West Markham Little Rock, AR 72205 (501) 682-4500 www.asklabor@arkansas.gov
CALIFORNIA	Department of Industrial Relations 455 Golden Gate Ave, 10th FL San Francisco, CA 94102 (415) 703-5070 www.dir.CA.gov Division of Labor Standards Enforcement 455 Golden Gate Ave., 9th FL San Francisco, CA 94101 (415) 703-4810 www.dir.CA.gov/dlse
COLORADO	Department of Labor and Employment 633 17th St., Suite 201 Denver, CO 80202-3660 (303) 318-8000 www.COworkforce.com
CONNECTICUT	Department of Labor 200 Folly Brook Blvd. Wethersfield, CT 06109-1114 (860) 263-6000 www.CT.gov/dol
DELAWARE	Delaware Department of Labor 4425 N. Market St., 4th FL Wilmington, DE 19802 (302) 761-8160 www.Delawareworks.com/
DISTRICT OF COLUMBIA	Employment Services Department 64 New York Ave., NE, Suite 3000 Washington, DC 20002 (202) 724-7000 www.DOES.DC.gov
FLORIDA	Agency for Workforce Innovation The Caldwell Building 107 East Madison St. Suite 100 Tallahassee, Florida 32399-4137 (800) 342-3450 www.Floridajobs.org/
GEORGIA	Department of Labor Sussex Place, Room 600

	148 Andrew Young International Blvd., NE Atlanta, GA 30303 (404) 232-3001 www.dol.state.GA.us/
HAWAII	Department of Labor & Industrial Relations 830 Punchbowl St. Honolulu, HI 96813 (808) 586-8842 www.Hawaii.gov/labor/
IDAHO	Department of Labor 317 W. Main St. Boise, ID 83735-0001 (208) 332-3570 (800) 843-3193 www.labor.idaho.gov
ILLINOIS	Department of Labor 1 W. Old State Capitol Plaza, Room 300 Chicago, IL 60601 (217) 782-6206 www.state.IL.us/agency/idol
INDIANA	Department of Labor Indiana Government Center South 402 W. Washington St., Room W195 Indianapolis, IN 46204 (317) 232-2655 www.IN.gov/labor
IOWA	Iowa Labor Services Division 1000 East Grand Ave. Des Moines, IA 50319-0209 (515) 281-5387 (800) JOB-IOWA www.iowaworkforce.org/labor
KANSAS	Department of Labor 401 S.W. Topeka Blvd. Topeka, KS 66603-3182 (785) 296-5000 www.dol.KS.gov
KENTUCKY	Kentucky Labor Cabinet 1047 U.S. Hwy 127 South, Suite 4 Frankfort, KY 40601-4381 (502) 564-3070 http://www.labor.KY.gov/
LOUISIANA	Louisiana Workforce Commission P.O. Box 94094 Baton Rouge, LA 70804-9094 (225) 342-3111 http://www.LAworks.net/
MAINE	Department of Labor 54 State House Station Dr. Augusta, ME 04330 (207) 623-7900 www.state.ME.us/labor
MARYLAND	Department of Labor , Licensing and Regulation

	500 N. Calvert St., Suite 401 Baltimore, MD 21202 (410) 230-6001 www.dllr.state.MD.us/
MASSACHUSETTS	Executive Office of Labor & Workforce Development One Ashburton Place, Rm 2112 Boston, MA 02108 (617) 626-7100 www.Mass.gov/eolwd www.state.ma.us/
MICHIGAN	Department of Energy, Labor & Economic Growth 611 W. Ottawa Lansing, MI 48933 (517) 373-1820 www.Michigan.gov/cis
MINNESOTA	Department of Labor and Industry 443 Lafayette Rd. North St. Paul, MN 55155 (651) 284-5005 www.doli.state.MN.us/
MISSISSIPPI	Department of Employment Security P.O. Box 1699 Jackson, MS 39215-1699 (601) 321-6000 www.mdes.MS.gov/
MISSOURI	Labor and Industrial Relations P.O. Box 504 421 E. Dunklin Jefferson City, MO 65102-0504 (573) 751-4091 www.dolir.MO.gov/lirc
MONTANA	Department of Labor and Industry P.O. Box 1728 Helena, MT 59624-1728 (406) 444-2840 www.dli.MT.gov/
NEBRASKA	Department of Labor 550 South 16th St. Box 94600 Lincoln, NE 68509-4600 (402) 471-9000 www.Nebraskaworkforce.com/
NEVADA	Department of Business and Industry 555 E. Washington Ave., Suite 4100 Las Vegas, NV 89101-1050 (702) 486-2650 www.laborcommissioner.com/ www.NV.gov
NEW HAMPSHIRE	Department of Labor State Office Park South 95 Pleasant St. Concord, NH 03301 (603) 271-3176

	www.labor.state.NH.us/
NEW JERSEY	Department of Labor and Workforce Development #1 John Fitch Plaza, 13th Fl, Suite D P.O. Box 110 Trenton, NJ 08625-0110 (609) 777-3200 http://lwd.dol.state.nj.us/labor/index.shtml
NEW MEXICO	Department of Work Force Solutions P.O. Box 1928 401 Broadway, N.E. Albuquerque, NM 87103-1928 (505) 841-2000 www.dol.state.NM.us/
NEW YORK	Department of Labor State Office Bldg. # 12, W.A. Harriman Campus Albany, NY 12240 (518) 457-9000 www.labor.state.NY.us/
NORTH CAROLINA	Department of Labor 4 West Edenton St. Raleigh, NC 27601-1092 (919) 733-7166 http://www.nclabor.com/
NORTH DAKOTA	Department of Labor State Capitol Building 600 East Blvd., Dept 406 Bismark, ND 58505-0340 (701) 328-2660 http://www.nd.gov/labor/
OHIO	Department of Commerce 77 South High St., 22nd FL Columbus, OH 43215 (614) 644-2239 www.com.state.OH.us/
OKLAHOMA	Department of Labor 3017 N. Stiles Ave., Suite 100 Oklahoma City, OK 73105-5212 (405) 521-6100 www.state.ok.us
OREGON	Bureau of Labor and Industries 800 NE Oregon St., #1045 Portland, OR 97232 (971) 673-0761 www.Oregon.gov/boli
PENNSYLVANIA	Department of Labor and Industry 1700 Labor and Industry Bldg 7th and Forster St. Harrisburg, PA 17120 (717) 787-5279 www.dli.state.PA.us
RHODE ISLAND	Department of Labor and Training 1511 Pontiac Ave. Cranston, RI 02920

	(401) 462-8000 www.dlt.state.RI.us
SOUTH CAROLINA	Department of Labor, Licensing & Regulations P.O. Box 11329 Columbia, SC 29211-1329 (803) 896-4300 www.llr.state.SC.us
SOUTH DAKOTA	Department of Labor 700 Governors Dr. Pierre, SD 57501-2291 (605) 773-3101 www.state.SD.us
TENNESSEE	Department of Labor & Workforce Development 220 French Landing Dr. Nashville, TN 37243 (615) 741-6642 www.state.TN.us/labor-wfd
TEXAS	Texas Workforce Commission 101 East 15th St. Austin, TX 78778 (512) 475-2670 www.twc.state.TX.us
UTAH	Utah Labor Commission 160 E. 300 S., Suite 300 Salt Lake City, UT 84114-6610 (801) 530-6800 Laborcommission.Utah.gov
VERMONT	Department of Labor 5 Green Mountain Dr. P.O. Box 488 Montpelier, VT 05601-0488 (802) 828-4000 www.labor.vermont.gov/
VIRGINIA	Department of Labor and Industry Powers-Taylor Building 13 S. 13th St. Richmond, VA 23219 (804) 371-2327 www.doli.Virginia.gov/
WASHINGTON	Department of Labor and Industries P.O. Box 44000 Olympia, WA 98504-4001 (360) 902-5800 www.lni.WA.gov/
WEST VIRGINIA	Division of Labor State Capitol Complex, #749 B Building #6, 1900 Kanawha Blvd. Charleston, WV 25305 (304) 558-7890 www.wvlabor.org
WISCONSIN	Department of Workforce Development 201 E. Washington Ave., #A400

	P.O. Box 7946 Madison, WI 53707-7946 (608) 266-3131 www.dwd.state.wi.us/
WYOMING	Department of Employment 1510 East Pershing Blvd. Cheyenne, WY 82002 (307) 777-7261 www.doe.state.wy.us/

* Current as of April 15, 2010

D. Should paid interns ever be considered “independent contractors”?

Generally not. Because most interns will not meet the stringent independent contractor tests, they typically should not be classified as independent contractors.

There is no single definition of “independent contractor.” However, a short-hand description of an independent contractor is a self-employed individual (or business) who provides services to a company, or multiple companies, typically on a project basis. Generally, the independent contractor’s services will differ from the work performed by the company’s employees, will be performed using the contractor’s own equipment on the contractor’s own premises, and will not be controlled or supervised by the company. Among other things, independent contractors do not receive benefits, are not covered by wage and hour laws or most other employment laws, are not subject to employment taxes, and are not eligible for workers’ compensation coverage or unemployment insurance.

Although different states, as well as federal and state government agencies, apply different tests to decide if an intern is an “employee” or “independent contractor,” each of these different tests focuses on one common factor: whether the employer has the right to control the intern.

The basic test for determining whether an intern is an independent contractor or an employee is whether the company has the right to direct and control the manner and means by which the work is performed. Factors that suggest the right to control include: 1) supervising or providing day-to-day instruction to the intern; 2) requiring the intern to report regularly to work at a certain time and/or a certain location, such as at the company’s place of business; 3) the company’s ability to terminate the intern for any reason without cause or notice; 4) providing training to the intern; 5) supplying the tools or instruments used in the internship, including telephones, computers, desks, email accounts and other equipment; or 6) prohibiting the intern from performing services for other businesses. No single factor is determinative. However, if any of the control factors is present, it is possible that the intern will be considered an employee and not an independent



contractor. If none of these factors is present, however, it may be appropriate to classify an intern as an independent contractor.

E. Should paid interns be considered “temporary employees” rather than “regular employees”?

Yes, if the internship is less than one year. In contrast to regular employees, temporary employees are employees hired for a limited period of time, usually less than one year. Interns who meet this definition can be classified as temporary employees, whether they work on a part-time or full-time basis. The advantage to classifying an intern as a temporary employee is that temporary employees are generally not entitled to receive employer benefits. For a detailed discussion regarding benefits, please see Section III(G), below.

F. Are employers required to provide unemployment insurance to paid interns?

Whether unemployment insurance is required will depend upon whether the internship is considered a “covered” employment under each state’s laws. The majority of states require employers to provide unemployment insurance to interns (who do not qualify as “independent contractors”) unless *all* of the following factors apply to the internship:

- The intern is enrolled as a student in a full-time program at a non-profit or public educational institution;
- The non-profit or public educational institution where the intern is enrolled maintains a regular faculty and curriculum and has a regular body of students in attendance at the place where educational activities take place;
- The intern is receiving credit for the program;
- The program combines academic instruction with work experience;
- The educational institution has certified to the employer that the internship is an integral part of the program; *and*
- The service provided by the intern is not being performed in a program established for or on behalf of an employer or a group of employers.

If all of these factors are met, unemployment insurance is generally not required. If they are not met, unemployment insurance generally will be required.

Following is a chart describing whether individual states deviate from the above standard:

STATE	FOLLOWS ABOVE STANDARD	DEVIATIONS
ALABAMA	Yes	None
ALASKA	Yes	Plus, intern must be under the age of 22
ARIZONA	Yes	None
ARKANSAS	Yes	Plus, intern must be under the age of 22
CALIFORNIA	Yes	Plus, intern must be under the age of 22
COLORADO	Yes	None
CONNECTICUT	Yes	None
DELAWARE	Yes	None
DISTRICT OF COLUMBIA	No	State law does not appear to have a specific intern test
FLORIDA	Yes	None
GEORGIA	Yes	None
HAWAII	Yes	None
IDAHO	Yes	Plus, intern must be under the age of 22
ILLINOIS	Yes	None
INDIANA	Yes	None
IOWA	Yes	None
KANSAS	Yes	None
KENTUCKY	Yes	None
LOUISIANA	Yes	Plus, intern must be under the age of 22
MAINE	No	Intern must be participating in a cooperative program of education and occupational training that is part of the school curriculum of any elementary, secondary or postsecondary school
MARYLAND	Yes	None
MASSACHUSETTS	Yes	None
MICHIGAN	Yes	Plus, intern must be under the age of 22
MINNESOTA	Yes	None
MISSISSIPPI	Yes	Plus, intern must be under the age of 22
MISSOURI	Yes	None
MONTANA	Yes	None
NEBRASKA	Yes	None
NEVADA	Yes	None
NEW HAMPSHIRE	Yes	None
NEW JERSEY	Yes	None
NEW MEXICO	Yes	None
NEW YORK	Yes	None
NORTH CAROLINA	Yes	None
NORTH DAKOTA	Yes	None
OHIO	Yes	None
OKLAHOMA	Yes	None
OREGON	Yes	Plus, the program must be approved by Oregon's Director of the Employment Department
PENNSYLVANIA	Yes	Plus, intern must be under the age of 22
RHODE ISLAND	Yes	None
SOUTH CAROLINA	Yes	Plus, intern must be under the age of 22
SOUTH DAKOTA	Yes	None

TENNESSEE	Yes	None
TEXAS	Yes	None
UTAH	Yes	None
VERMONT	Yes	Plus, intern must be under the age of 22
VIRGINIA	Yes	None
WASHINGTON	No	State law does not appear to have a specific intern test
WEST VIRGINIA	Yes	None
WISCONSIN	Yes	None
WYOMING	Yes	But, covers any educational institute of any nature, even those that do not have a regular faculty and students located at the place where educational activities occur

* Current as of April 15, 2010

G. Must paid interns be offered participation in 401(k) plans or other benefits?

No. Employers generally have the authority to determine who participates in their benefit plans. But there are a few legal restrictions or requirements that apply in certain circumstances, and employers must be certain that their intentions are accurately reflected in the appropriate benefit plan documents and in communications with interns. If an employer purchases insurance to provide benefits (such as employee medical benefits or life insurance programs), it must also verify that its eligibility decisions for interns are consistent with the applicable insurance policy. Although employers should confer with legal counsel about their particular situation, here are some general principles to consider.

- If an intern is being paid for services rendered, and is an employee (rather than an “independent contractor”), the employer must decide whether the intern is eligible to participate in its benefit plans.
- Most internships are relatively short in duration, and many (but not all) employers have 401(k) plans and other retirement plans that delay eligibility and participation until the employee's one year anniversary. For employers who have such plans, most interns will automatically be excluded from eligibility because of their brief tenure as an employee. Here again, employers should advise employee interns in offer letters and other communications that they will not be eligible to receive such benefits.
- For benefit plans that do not have a delayed-eligibility provision, employers must examine their eligibility provisions to verify that they accurately express the employer's intentions. Except as discussed below, employers have virtually unlimited discretion to either include or exclude employee interns from participation in their benefit plans. Because federal

law requires that any employee benefit plan must be operated in accordance with its written terms, employers must ensure that their benefit plans are properly drafted, in accordance with the employer's preferences, to either include or exclude employee interns from eligibility and participation in the employer's benefit plans.

Although employers have substantial discretion to exclude most employees from participation in their benefit plans, there are generally three sets of restrictions on such discretion, and employers should be mindful of these restrictions:

1. The first restriction is contractual. For insured employee medical plans and other insured plans, employers must comply with the applicable insurance policy; otherwise, an employer who promises to provide certain insured benefits to an otherwise ineligible employee intern might discover that it, and not the insurer, is legally obligated to pay for benefits.
2. Second, tax-qualified retirement plans such as 401(k) plans, and employee medical plans that are self-insured by the employer, are subject to federal statutory and regulatory provisions that prohibit the employer from discriminating in favor of highly-paid employees. Because most employee intern programs have very few participants, it is unlikely that any decision to exclude interns from such a plan will have an unlawfully discriminatory impact. Nonetheless, employers should confer with employee benefits counsel and/or each plan's third-party administrator to ensure that the non-discrimination requirements (including the non-discrimination testing requirements) are properly accounted for when making a decision to exclude employee interns from participation in any such plan.
3. Finally, federal law prohibits service-based eligibility exclusions that require more than one year of service in order to participate in a tax-qualified retirement plan such as a 401(k) plan. Thus, if someone is classified as an employee intern but actually performs the same work as other company employees, and if the intern is excluded from participation even though he or she has a year of service with the employer, the employer might be required under federal law to allow the intern to participate in the 401(k) or other tax-qualified retirement plan. Thus, employers who wish to exclude employee interns from participation in their 401(k) plans should generally ensure that employee internships are less than one year in duration, or they should obtain advice from legal counsel about whether the intern in that particular situation may properly be excluded from participating in that plan.

H. Am I required to maintain workers' compensation insurance for paid interns?

Employers will typically be required to maintain workers' compensation coverage for interns. Some states, however, provide limited exceptions, including the following:

- **Volunteers:** Some states provide that employers are not required to provide workers' compensation coverage to "volunteers." The definition of "volunteer" varies by state.
- **Interns:** Some states provide limited exemptions for trainees who meet specified criteria.

The following table provides an overview of whether particular states apply either exception:

STATE	VOLUNTEER EXCEPTION	INTERN EXCEPTION
ALABAMA	No	No
ALASKA	Likely	No
ARIZONA	Likely	No
ARKANSAS	No	No
CALIFORNIA	Yes, but limited to volunteers for public agencies or private non-profit organizations for charitable purposes	No
COLORADO	No	No
CONNECTICUT	Likely	No
DELAWARE	Yes	No
DISTRICT OF COLUMBIA	No	No
FLORIDA	Yes	No
GEORGIA	Likely	No
HAWAII	Yes, but limited to unpaid volunteers for religious, charitable, educational, or non-profit organizations	No
IDAHO	No	Yes, if: a) intern is under 22; b) intern is enrolled as full-time student at non-profit or public educational institution; c) Intern is receiving credit for the program; d) Program combines academic instruction with work experience; <i>and</i> e) Intern's service not performed in a program established for or on behalf of an employer or group

		of employers.
ILLINOIS	Yes	No
INDIANA	No	No
IOWA	No	No
KANSAS	Yes	No
KENTUCKY	Yes	Yes, if meet Federal Intern Test (defined below)
LOUISIANA	No	No
MAINE	Likely	No
MARYLAND	No	No
MASSACHUSETTS	No	No
MICHIGAN	No	No
MINNESOTA	Yes, but generally limited to volunteers of social services programs	No
MISSISSIPPI	Yes	Yes, but limited to unpaid student of an educational institution who, as a part of such educational institution's curriculum, is receiving practical training at any facility, who is under the active and direct supervision of the personnel of the facility and/or an instructor of the educational institution
MISSOURI	No	No
MONTANA	No	No
NEBRASKA	No	No
NEVADA	No	No
NEW HAMPSHIRE	Likely	No
NEW JERSEY	Yes	No
NEW MEXICO	No	No
NEW YORK	Yes, but limited to charitable work for non-profit organizations	No
NORTH CAROLINA	No	No
NORTH DAKOTA	Yes	No
OHIO	Yes	No
OKLAHOMA	Yes	Yes, if in a work training program
OREGON	Yes, but limited to charitable work for non-profit organizations	No
PENNSYLVANIA	Yes	No
RHODE ISLAND	Yes	No
SOUTH CAROLINA	Yes	No
SOUTH DAKOTA	Yes	No
TENNESSEE	Likely	No
TEXAS	Yes	No
UTAH	Yes	Yes, if unpaid and receiving school credit
VERMONT	No	No
VIRGINIA	No	No

WASHINGTON	Likely	No
WEST VIRGINIA	No	No
WISCONSIN	Yes	Yes, but limited to unpaid students performing services as part of a school work training, work experience, or work study program
WYOMING	No	No

* Current as of April 15, 2010

I. What are my general legal obligations to paid interns?

Unless paid interns are properly classified as “independent contractors,” employers’ legal obligations toward them will not differ from that of their other employees.

J. Are there any additional considerations that might affect how I incorporate interns into my business?

Yes. Employers should evaluate whether to limit the type of work assigned to interns as a result of any confidentiality, contractual, or insurance concerns.

IV. UNPAID INTERNSHIPS

A. What is an “unpaid internship”?

In an unpaid internship, interns do not receive compensation during the internship. In lieu of compensation, interns are provided training, academic credit, and/or credit toward professional licensing.

B. What are the federal standards for unpaid internships?

Unpaid internships are permissible under federal law if the intern meets the Federal Intern Test (below). If interns meet this test, they will not be considered “employees” and can be unpaid. If they do not meet this test, interns will generally be considered employees who will be entitled to earn minimum wage and overtime pay. (See Section III for a discussion of paid internships.)

1. The “Federal Intern Test”

Under the Fair Labor Standards Act (“FLSA”), the federal law that establishes minimum wage, overtime, recordkeeping and child labor standards for employees, non-exempt “employees” must generally receive minimum wage and overtime pay. The FLSA’s definitions, however, provide little guidance to

employers regarding who qualifies as an employee. Indeed, the FLSA defines “employee” as “any individual employed by an employer.” It defines “employ” as “to suffer or permit to work,” and “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee.” (29 USC § 203(e), (g), (d).)

Fortunately, the Department of Labor (“DOL”), which enforces the FLSA, has established a six-part test (referred to in this paper as the “Federal Intern Test”) to determine whether an individual is an employee. Under the Federal Intern Test, interns will not be considered employees under the FLSA if *all* of the six following criteria are met:

1. The training provided to the intern is similar to that given in a vocational school or academic educational instruction;
2. The training received by the intern is for his or her benefit;
3. The intern does not displace regular employees, but works under their close observation or supervision;
4. The employer that provides the training derives no immediate advantage from the intern’s activities and, on occasion, the intern may actually slow down normal operations;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The intern understands that the internship will be unpaid.

According to the DOL, *all* of these factors must be met for an intern not to be deemed an employee. At least one court, however, applied the factors more loosely and analyzed the factors in the “totality of the circumstances.” In that case, the court upheld a training program for firefighters despite the fact that one factor, the non-expectation of employment at the end of the training, was not met (See, e.g., *Reich v. Parker Fire Protection District*, 992 F.2d 1023 (10th Cir. 1993).)

Note that the test emphasizes *training*; interns that do not receive any training will be considered employees (and thus must be paid).

Practically speaking, how can employers apply these factors? Perhaps the best place to start is to ask one fundamental question: Is the training received by interns primarily for their benefit or the employer’s? If the internship does not primarily benefit the interns, they will be considered employees.

If an intern receives academic credit or licensing, the FLSA, as well as courts interpreting the FLSA, are more likely to conclude that the internship or training is primarily for the intern's benefit.

2. Applying the Test: Case Studies and Opinion Letters

In *Donovan v. American Airlines*, 686 F.2d 267 (5th Cir. 1982), the Fifth Circuit Court of Appeals found that attendees of American Airlines' unpaid training programs for flight attendants and reservation assistants were not employees. The court based its decision on the following factors:

- The trainees were not guaranteed employment at the conclusion of the training. To participate in the training, participants had to give up their jobs to attend full-time, unpaid training in Dallas. Certainly, the attendees hoped to become eligible for jobs with American and assumed that American would not offer the program if it did not also hope to hire the trainees. However, this factor pointed to no employment relationship because there was no promise of employment.
- The trainees signed a written acknowledgement that they were not employees during the training. They also acknowledged in writing that acceptance for the training did not constitute an offer of employment.
- Similar flight attendant training was offered by over fifty institutions, including preparatory schools and junior colleges.
- During the training, no trainee supplemented the work of or replaced American's employees.
- The training was primarily for the trainees' benefit because it was an integral part of learning the trade. That training required full-time attendance or occurred at one location does not mean that the trainees were "working" while receiving instruction.

Similarly, in *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947), one of the first cases addressing this issue and the origin of the Federal Intern Test, the United States Supreme Court upheld an unpaid training program for prospective railroad workers. The trainees attended a course of training at the railroad in which they observed railroad workers performing their jobs and then performed "on the job" training under the workers' supervision. The Court found that the trainees were not employees for several reasons:

- The training was provided *primarily* for the benefit of the trainees because they learned essential skills that were necessary to apply for a position with the railroad.
- The trainees did not provide any “immediate advantage” to the railroad. Although the trainees performed some actual work during the training program, the work was closely supervised by regular employees, did not displace regular employees, and was performed for training purposes. The mere fact that graduates of the training program might ultimately be part of the labor pool from which the railroad recruited did not change this result. (*Note, however, that if the training offered guaranteed employment at the conclusion of the training, the result would have been different.*)
- The training was similar to that performed at a vocational school. The Court stated that employers should not be penalized for providing, free of charge, training at a place and in a manner that would greatly benefit trainees. The Court reasoned that although the FLSA’s definition of “employee” and “employer” are broad, the FLSA “was obviously not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another.” (*Walling*, 330 U.S. at 152.) If it were, “all students would be employees of the school or college they attended, and as such entitled to receive minimum wages.” (*Id.*)

In *Ulrich v. Alaska Airlines*, WL 364056 (W.D. Wash. Feb. 9, 2009), the court held that flight attendant trainees for Alaska Airlines were not “employees” under the Federal Intern Test. Most important to the court’s analysis were the following factors:

- The trainees did not displace regular employees. In every training flight, Alaska Airlines fully staffed the flight with regular, paid flight attendants.
- Alaska Airlines received no immediate benefit. Unlike the employer in *McLaughlin* (below) who used trainees to get work done that it would otherwise have had to pay for, Alaska Airlines still had to pay for a full complement of flight attendants on the training flights.

Finally, in contrast to these cases, in *McLaughlin v. Ensley*, 877 F.2d 1207 (4th Cir. 1989), the Fourth Circuit Court of Appeals held that trainees who assisted experienced delivery truck drivers during a week-long orientation were employees under the FLSA. The court’s decision was premised upon the following factors:

- The training provided was limited in scope, and the trainees did not learn skills taught in vocational courses. Rather, the trainees merely acted as assistants to delivery drivers. In such a role, the trainees only learned simple, job-specific functions related to employer's own business.
- The employer received more of an advantage from the training than the trainees. Specifically, the employer received direct assistance that benefited its regular employees while they performed their normal duties. Conversely, the trainees worked without pay in a role that was limited in both time and training.
- The court concluded that an employer who receives an immediate benefit from the work of a trainee must reciprocate that benefit in equal or greater proportion to the trainee or the trainee will be deemed an employee.

In line with these cases, the DOL has issued several opinion letters finding select training programs to be *primarily* for the benefit of the trainee or student. In one such letter, the DOL concluded that participants in a four-day training offered to prospective telemarketers by a company that processed phone orders were not employees under the FLSA for the following reasons:

- The training was conducted in classrooms equipped with computers away from the work site and, like vocational schools, taught communication skills, sales skills, and customer service methodology.
- The training was for the benefit of the trainees because they learned important skills that would be useful in other contexts.
- The trainees did not displace or supplement the work of regular company employees. In fact, the trainees did not have any contact with customers until the last day of their training, when they answered calls for 30-60 minutes under the supervision of quality assurance personnel.
- The trainees were not guaranteed employment at the conclusion of the training.
- The trainees acknowledged in writing that they were not company employees during training and would not receive hourly pay for training time.

(DOL Wage-Hour Opinion Letter, 1/30/01.)

C. What are some state law considerations?

Generally, private employers must follow federal law, as well as the law of the state(s) in which they are located. Where there is a difference between federal and state laws, employers must typically follow the law that is more strict or protective (i.e., in this case, the law that provides the greatest protection to interns). Thus, it is important for employers to assess whether their interns will be considered employees under the Federal Intern Test and any tests used in the state(s) in which the individuals will perform the internship.

The chart below provides an overview of which states follow the Federal Intern Test and those that apply different standards.

If employers are uncertain about whether their interns may be deemed employees, it is advisable to consult with employment counsel for guidance. In the absence of specific legal advice, when in doubt, employers should err on the side of treating their interns as employees.

STATE	FOLLOWS FEDERAL INTERN TEST	DEVIATIONS
ALABAMA	Yes	None
ALASKA	Likely	None known
ARIZONA	Likely	None known
ARKANSAS	Likely	None known
CALIFORNIA	Yes	None
COLORADO	Yes	None
CONNECTICUT	Likely	None known
DELAWARE	Likely	None known
DISTRICT OF COLUMBIA	Likely	None known
FLORIDA	Likely	None known
GEORGIA	Yes	None
HAWAII	Likely	None known
IDAHO	Likely	None known
ILLINOIS	Likely	None known
INDIANA	Likely	None known
IOWA	Likely	None known
KANSAS	Yes	None
KENTUCKY	Yes	None
LOUISIANA	Yes	None
MAINE	Likely	None known
MARYLAND	Likely	None known
MASSACHUSETTS	Likely	None known
MICHIGAN	Yes	None
MINNESOTA	Yes	None
MISSISSIPPI	Yes	None
MISSOURI	Likely	None known

MONTANA	Likely	None known
NEBRASKA	Likely	None known
NEVADA	Yes	None
NEW HAMPSHIRE	Likely	None known
NEW JERSEY		In addition to the Federal Intern Test, to avoid an employment relationship in New Jersey, the following additional factors must be met: <ol style="list-style-type: none"> 1. The employment for which the intern is training requires some cognizable skill; 2. The training received during the internship is not specific to the employer and its needs, but may be applicable elsewhere for another employer or in another field or endeavor; and 3. The internship is sponsored by the employer, is outside regular work hours, and the intern does not perform productive work during the internship.
NEW MEXICO	No*	Applies a lower standard. New Mexico minimum wage law exempts students regularly enrolled in primary or secondary schools working after school hours or on vacation. *Because federal law is more protective, the Federal Intern Test likely applies.
NEW YORK		In addition to the Federal Intern Test, to avoid an employment relationship in New York, the following additional factors must be met: <ol style="list-style-type: none"> 1. The internship fits the curriculum requirements of the individual's school; and 2. The individual receives school credit for the work being performed during the internship program.
NORTH CAROLINA	Yes	None
NORTH DAKOTA	Yes	Likely limited to students
OHIO	Yes	None
OKLAHOMA	Likely	None known
OREGON	Yes	None
PENNSYLVANIA	Likely	None known
RHODE ISLAND	Likely	None known
SOUTH CAROLINA	Yes	None
SOUTH DAKOTA	Likely	None known
TENNESSEE	Yes	None
TEXAS	Yes	None
UTAH	Yes	None
VERMONT	Likely	None known
VIRGINIA	Yes	None
WASHINGTON	Likely	None known
WEST VIRGINIA	No*	West Virginia provides a student worker provision that is lower than the Federal Intern Test.

		*Because federal law is more protective, the Federal Intern Test likely applies.
WISCONSIN	Likely	None known
WYOMING	Likely	None known

* Current as of April 15, 2010

D. Can unpaid interns be classified as volunteers?

Generally not. Under applicable federal law, individuals cannot “volunteer” services to a private sector, for-profit business. Rather, only those individuals who volunteer for a public agency, interstate government agency or community, religious or other non-profit organizations for religious or humanitarian reasons may be unpaid.

For example, a for-profit business that offered gift-wrapping services wanted to use volunteers to wrap gifts during the holiday season. The employer asked the DOL to issue an opinion regarding whether this arrangement was permissible. The DOL responded that it was not because volunteer status is limited “to those individuals performing charitable activities for non-for profit organizations.” (DOL Wage-Hour Opinion Letter, 7/18/96.) “Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees without contemplation of pay, are not considered employees of the religious, charitable, and similar not-for-profit organizations which receive their services.” (*Id.*) Because the business’ proposed gift-wrappers would be providing services to a for-profit business, and not a community or religious program, they were employees entitled to minimum wage and overtime compensation.

E. Are employers required to provide unemployment insurance to unpaid interns?

Whether unemployment insurance is required will depend upon whether the internship is considered a “covered” employment under each state’s laws. The majority of states require employers to provide unemployment insurance to interns (who do not qualify as “independent contractors”) unless *all* of the following factors apply to the internship:

- The intern is enrolled as a student in a full-time program at a non-profit or public educational institution;
- The non-profit or public educational institution where the intern is enrolled maintains a regular faculty and curriculum and has a regular body of students in attendance at the place where educational activities take place;
- The intern is receiving credit for the program;

- The program combines academic instruction with work experience;
- The educational institution has certified to the employer that the internship is an integral part of the program; *and*
- The service provided by the intern is not being performed in a program established for or on behalf of an employer or a group of employers.

If all of these factors are met, unemployment insurance is generally not required. If they are not met, unemployment insurance generally will be required.

Following is a chart describing whether individual states deviate from the above standard:

STATE	FOLLOWS ABOVE STANDARD	DEVIATIONS
ALABAMA	Yes	None
ALASKA	Yes	Plus, intern must be under the age of 22
ARIZONA	Yes	None
ARKANSAS	Yes	Plus, intern must be under the age of 22
CALIFORNIA	Yes	Plus, intern must be under the age of 22
COLORADO	Yes	None
CONNECTICUT	Yes	None
DELAWARE	Yes	None
DISTRICT OF COLUMBIA	No	State law does not appear to have a specific intern test
FLORIDA	Yes	None
GEORGIA	Yes	None
HAWAII	Yes	None
IDAHO	Yes	Plus, intern must be under the age of 22
ILLINOIS	Yes	None
INDIANA	Yes	None
IOWA	Yes	None
KANSAS	Yes	None
KENTUCKY	Yes	None
LOUISIANA	Yes	Plus, intern must be under the age of 22
MAINE	No	Intern must be participating in a cooperative program of education and occupational training that is part of the school curriculum of any elementary, secondary or postsecondary school
MARYLAND	Yes	None
MASSACHUSETTS	Yes	None
MICHIGAN	Yes	Plus, intern must be under the age of 22
MINNESOTA	Yes	None
MISSISSIPPI	Yes	Plus, intern must be under the age of 22
MISSOURI	Yes	None
MONTANA	Yes	None
NEBRASKA	Yes	None
NEVADA	Yes	None

NEW HAMPSHIRE	Yes	None
NEW JERSEY	Yes	None
NEW MEXICO	Yes	None
NEW YORK	Yes	None
NORTH CAROLINA	Yes	None
NORTH DAKOTA	Yes	None
OHIO	Yes	None
OKLAHOMA	Yes	None
OREGON	Yes	Plus, the program must be approved by Oregon's Director of the Employment Department
PENNSYLVANIA	Yes	Plus, intern must be under the age of 22
RHODE ISLAND	Yes	None
SOUTH CAROLINA	Yes	Plus, intern must be under the age of 22
SOUTH DAKOTA	Yes	None
TENNESSEE	Yes	None
TEXAS	Yes	None
UTAH	Yes	None
VERMONT	Yes	Plus, intern must be under the age of 22
VIRGINIA	Yes	None
WASHINGTON	No	State law does not appear to have a specific intern test
WEST VIRGINIA	Yes	None
WISCONSIN	Yes	None
WYOMING	Yes	But, covers any educational institute of any nature, even those that do not have a regular faculty and students located at the place where educational activities occur

* Current as of April 15, 2010

F. Must unpaid interns be offered participation in 401(k) plans or other benefits?

No. Employers generally have the authority to determine who participates in their benefit plans. But there are a few legal restrictions or requirements that apply in certain circumstances, and, employers must be certain that their intentions are accurately reflected in the appropriate benefit plan documents and in communications with interns. If an employer purchases insurance to provide benefits (such as employee medical benefits or life insurance programs), it must also verify that its eligibility decisions for interns are consistent with the applicable insurance policy. Although employers should confer with legal counsel about their particular situation, here are some general principles to consider.

- Most employee benefit plans, including most 401(k) plans, medical plans, disability and life insurance plans are specifically drafted to apply only to employees. Moreover, 401(k) and pension plans are designed to provide benefits only in connection with compensation earned by the employee in the course of employment. Other benefits, such as medical benefits, are

treated as non-taxable only in the case of an actual employment relationship. Thus, if an intern does not qualify as an “employee” and is not receiving any pay, each of the employer’s benefit plans almost certainly prohibits any such intern from participating in that plan. Internship offers and other communications with unpaid interns should therefore clearly state that the intern will not be eligible to participate in any of the employer’s employee benefit plans.

- Most other benefit arrangements and policies, such as vacation, holiday, and sick leave arrangements, also are intended and drafted to apply only to employees. Employers therefore have no obligation to extend such benefits to true, unpaid interns and should explain this to prospective interns.

G. Am I required to maintain workers’ compensation insurance for unpaid interns?

Employers will typically be required to maintain workers’ compensation coverage for interns. Some states, however, provide limited exceptions, including the following:

- **Volunteers:** Some states provide that employers are not required to provide workers’ compensation coverage to “volunteers.” The definition of “volunteer” varies by state.
- **Interns:** Some states provide limited exemptions for trainees who meet specified criteria.

The following table provides an overview of which states apply either exception:

STATE	VOLUNTEER EXCEPTION	INTERN EXCEPTION
ALABAMA	No	No
ALASKA	Likely	No
ARIZONA	Likely	No
ARKANSAS	No	No
CALIFORNIA	Yes, but limited to volunteers for public agencies or private non-profit organizations for charitable purposes	No
COLORADO	No	No
CONNECTICUT	Likely	No
DELAWARE	Yes	No
DISTRICT OF COLUMBIA	No	No
FLORIDA	Yes	No

GEORGIA	Likely	No
HAWAII	Yes, but limited to unpaid volunteers for religious, charitable, educational, or non-profit organizations	No
IDAHO	No	Yes, if: a) intern is under 22; b) intern is enrolled as full-time student at non-profit or public educational institution; c) Intern is receiving credit for the program; d) Program combines academic instruction with work experience; <i>and</i> e) Intern's service not performed in a program established for or on behalf of an employer or group of employers.
ILLINOIS	Yes	No
INDIANA	No	No
IOWA	No	No
KANSAS	Yes	No
KENTUCKY	Yes	Yes, if meet Federal Intern Test (defined below)
LOUISIANA	No	No
MAINE	Likely	No
MARYLAND	No	No
MASSACHUSETTS	No	No
MICHIGAN	No	No
MINNESOTA	Yes, but generally limited to volunteers of social services programs	No
MISSISSIPPI	Yes	Yes, but limited to unpaid student of an educational institution who, as a part of such educational institution's curriculum, is receiving practical training at any facility, who is under the active and direct supervision of the personnel of the facility and/or an instructor of the educational institution
MISSOURI	No	No
MONTANA	No	No
NEBRASKA	No	No
NEVADA	No	No
NEW HAMPSHIRE	Likely	No
NEW JERSEY	Yes	No
NEW MEXICO	No	No
NEW YORK	Yes, but limited to charitable work for non-profit organizations	No
NORTH CAROLINA	No	No
NORTH DAKOTA	Yes	No

OHIO	Yes	No
OKLAHOMA	Yes	Yes, if in a work training program
OREGON	Yes, but limited to charitable work for non-profit organizations	No
PENNSYLVANIA	Yes	No
RHODE ISLAND	Yes	No
SOUTH CAROLINA	Yes	No
SOUTH DAKOTA	Yes	No
TENNESSEE	Likely	No
TEXAS	Yes	No
UTAH	Yes	Yes, if unpaid and receiving school credit
VERMONT	No	No
VIRGINIA	No	No
WASHINGTON	Likely	No
WEST VIRGINIA	No	No
WISCONSIN	Yes	Yes, but limited to unpaid students performing services as part of a school work training, work experience, or work study program
WYOMING	No	No

* Current as of April 15, 2010

H. Is it advisable for unpaid interns to receive academic credit?

Yes. As described above, interns are much more likely to be deemed non-employees if they receive academic credit or participate in school-sponsored internship or training programs. Interns may also benefit from the academic credits. Many colleges and universities grant such credits for internships so you may either request or require applicants to check with their schools to obtain such credits.

I. Will unpaid interns be considered employees under applicable federal employment law?

Generally not. Unpaid interns who are not considered employees will typically not be covered by federal laws that apply to “employees.” As discussed above, interns who meet the Federal Intern Test will not be subject to the Fair Labor Standards Act. They also will typically not be covered by federal anti-discrimination employment laws, such as Title VII, the Americans with Disabilities Act, the Genetic Information Non-Discrimination Act, and the Age Discrimination in Employment Act. Generally, these laws broadly define employees to include individuals “that are employed by the employer.” Under relevant case law, to meet this definition courts typically require some form of payment to the individual, such as actual compensation or other benefits of employment.

J. Are there any additional considerations that might affect how I incorporate interns into my business?

Yes. Employers should evaluate whether to limit the type of work assigned to interns as a result of any confidentiality, contractual, or insurance concerns.

V. APPENDIX A – SAMPLE OFFER LETTER FOR PAID INTERN

Important Note: This document is provided for reference only and is not intended to be, and should not be considered, legal advice. Determinations about whether this form will be appropriate in your particular situation or jurisdiction should be made after consultation with legal counsel.

Date _____

Name _____

Address _____

City, State Zip Code _____

Re: *Internship Offer*

Dear _____:

On behalf of _____ (the "Company"), I am pleased to extend to you this offer of temporary employment as an Intern, reporting to _____. If you accept this offer, you will begin employment with the Company on _____ and will be expected to work _____ hours per week.

You will be paid \$_____ per hour, less all applicable taxes and withholdings, payable every two weeks. As a temporary employee, you will not receive any of the employee benefits that regular Company employees receive, including, but not limited to, health insurance, vacation or sick pay, paid holidays, or participation in the Company's 401(k) plan.

Your internship is expected to end on _____. However, your employment with the Company is "at-will," which means that either you or the Company may terminate your employment at any time, with or without cause and with or without notice. The at-will nature of the employment relationship can only be changed by a written agreement signed by you and the Company's _____ [insert title of individual, e.g. Chief Executive Officer].

During your employment, you may have access to trade secrets and confidential business information belonging to the Company. By accepting this offer of employment, you acknowledge that you must keep all of this information strictly confidential, and refrain from using it for your own purposes or from disclosing it to anyone outside the Company. In addition, you agree that, upon conclusion of your employment, you will

immediately return to the Company all of its property, equipment, and documents, including electronically stored information.

Please note that this offer of employment is contingent upon you providing the Company, within 3 days of your start date, legally-required proof of your identity and authorization to work in the United States. Accordingly, please be prepared to furnish appropriate documents satisfying those requirements.

By accepting this offer, you agree that throughout your employment, you will observe all policies and practices governing the conduct of our business and employees, including our policies prohibiting discrimination and harassment. This letter sets forth the complete offer we are extending to you, and supersedes and replaces any prior inconsistent statements or discussions. It may be changed only by a subsequent written agreement.

I hope that your association with the Company will be successful and rewarding. Please indicate your acceptance of this offer by signing below and returning it to _____. If you have any questions, please contact _____ at _____.

Very truly yours,

Name
Title

I accept employment with the Company on the terms and conditions set out in this letter.

Printed Name

Signature

Date

VI. APPENDIX B – SAMPLE OFFER LETTER FOR UNPAID INTERN

Important Note: This document is provided for reference only and is not intended to be, and should not be considered, legal advice. Determinations about whether this form will be appropriate in your particular situation or jurisdiction should be made after consultation with legal counsel.

Date

Name

Address

City, State Zip Code

Re: *Internship Offer*

Dear _____:

We are pleased to offer you an internship with _____ (the “Company”).

As we discussed, your internship is expected to last from _____ to _____, for _____ hours per week. **[OPTIONAL:** However, at the sole discretion of the Company, the duration of the internship may be extended or shortened with or without advance notice.]

[OPTIONAL: Include description of internship program and training.]

As an intern, you will not be a Company employee. Therefore, you will not receive a salary, wages, or other compensation. In addition, you will not be eligible for any benefits that the Company offers its employees, including, but not limited to, health benefits, holiday pay, vacation pay, sick leave, retirement benefits, or participation in the Company’s 401(k) plan. You understand that participation in the internship program is not an offer of employment, and successful completion of the internship does not entitle you to employment with the Company.

During your internship, you may have access to confidential, proprietary, and/or trade secret information belonging to the Company. You agree that you will keep all of this information strictly confidential and refrain from using it for your own purposes or from disclosing it to anyone outside the Company. In addition, you agree that, upon

conclusion of the internship, you will immediately return to the Company all of its property, equipment, and documents, including electronically stored information.

By accepting this offer, you agree that you will follow all of the Company's policies that apply to non-employee interns, including, for example, the Company's anti-harassment policy.

This letter constitutes the complete understanding between you and the Company regarding your internship and supersedes all prior discussions or agreements. This letter may only be modified by a written agreement signed by both of us. Please indicate your acceptance of this offer by signing below and returning it to

_____.

I am pleased to extend this internship offer to you, and hope that your internship will be rewarding. If you have any questions, please feel free to contact _____ at

_____.

Sincerely,

Name
Title

I accept the internship offered by the Company on the terms and conditions described in this letter.

Printed Name

Signature

Date