



# Catholic Foundation

## 1988 - 2016

### The Unpaid Internship: Proceed With Caution

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What college student wouldn't want the opportunity to work with a nonprofit, right? And what nonprofit wouldn't want an intern? Think about all the experience he or she will gain, not to mention the fact that you can finally get that huge file-storage project done.

If this all sounds familiar to you and your organization, step back and take note—the Fair Labor Standards Act (FLSA) may put a damper on your unpaid intern dreams. While many nonprofits believe that the requirements of the FLSA apply only to for-profit, private-sector employers, there is still much debate about this. The United States Department of Labor (DOL) Wage and Hour Division often refers to its “Fact Sheet 71: Internship Programs Under the Fair Labor Standards Act” when addressing this issue.

However, this fact sheet is mere guidance for the DOL. While it says that unpaid internships are “generally permissible” for a “nonprofit charitable organization,” what the DOL means by “generally permissible” is not defined, and unpaid interns are free to bring an FLSA claim if they choose to do so. The fact sheet goes on to state that the “[Wage and Hour Division] is reviewing the need for additional guidance on internships in the public and nonprofit sectors.”

The FLSA does offer an exclusion from the definition of “employee” for those interns who receive training for their own educational benefit, if the training meets certain criteria. Each internship opportunity should be evaluated on an individual basis. To determine if your organization's intern is exempt, it is recommended that you apply the following criteria to the situation:

1. The internship, 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 that provides the training 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 understand that the intern is not entitled to wages for the time spent in the internship.

In order to gain the benefit of the exemption, all six of these factors must apply to the internship situation.



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### Is Our Intern Really a Volunteer, and Is That OK?

A true volunteer works without the expectation of being paid. However, it is permissible for a nonprofit to pay expenses of its volunteers, provide some reasonable benefits and even pay a nominal fee. A nominal fee may not be dependent on the volunteer's productivity or the number of hours worked. A stipend or fee paid to a volunteer should never exceed 20 percent of the amount it would cost the nonprofit organization to pay an employee to perform the same tasks.

If you decide to pay a stipend, use caution. If your nonprofit considers its interns "volunteers," but pays them a stipend, there could be consequences. The stipend may cause the DOL to classify the intern as an employee, creating the obligation to pay the intern at least minimum wage and back taxes. For this reason, it may be best to reimburse for internship-related expenses such as parking or lunch, but forgo any general fee or stipend.

### Practice Tips for Hosting Unpaid Interns:

- **Document.** Clarify your intern's role (either unpaid volunteer or paid employee) in writing. This can be done in the form of an offer letter to the potential intern.
- **Manage the risk.** In some states volunteers are not covered by workers' compensation insurance, so if the intern is injured, he or she may be prevented from getting compensation for those injuries. Inform the intern if there is insurance coverage at the start of the internship. It is best to avoid surprises in the event of an accident.
- **Clarify workplace policies.** For example, many nonprofits have a policy that volunteers may be reimbursed for expenses related to the services they provide the nonprofit.

Keeping these tips in mind can help lessen the stress and increase the benefit of hosting interns at your organization. (And free up lots more time for file-storage.)

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[http://www.nonprofitpro.com/article/the-unpaid-internship-proceed-with-caution/#utm\\_source=nonprofit-pro-today&utm\\_medium=newsletter&utm\\_campaign=2016-02-15&utm\\_content=the+unpaid+internship%3A+proceed+with+caution-2](http://www.nonprofitpro.com/article/the-unpaid-internship-proceed-with-caution/#utm_source=nonprofit-pro-today&utm_medium=newsletter&utm_campaign=2016-02-15&utm_content=the+unpaid+internship%3A+proceed+with+caution-2)