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The Fair Labor Standards Act (FLSA) requires "for-profit" employers to pay employees for their work. Interns and students, however, may not be considered "employees" under the FLSA, in which case the FLSA does not require compensation for their work.

## How to Determine if an Intern Is an Employee

The U.S. Department of Labor (DOL) and many courts use the "**primary beneficiary**" test as shown below to determine whether an intern or student is, in fact, an employee under the FLSA. **If analysis of these factors reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. If the analysis confirms the intern or student is not an employee, he or she is not entitled to minimum wage or overtime pay under the FLSA.**

The following seven factors are included in the primary beneficiary test:

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 that would be 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.

**Notably, the primary beneficiary test is flexible, and no single factor is determinative. Instead, whether an intern or student is an employee under the FLSA depends on the unique circumstances of each case.**