

Interns – Independent Contractors

To Pay or Not to Pay (and how) - That is the Question . . .

Question: We are considering recruiting several college students for an internship. Do we have to pay them?

Answer: In some cases, individuals working for an employer in a training capacity do not qualify as “employees” under the Fair Labor Standards Act (FLSA), and therefore do not have to be paid. The activities and work completed during the internship will determine the employment status of the student. The following criteria is used to determine if the interns are “employees”, or if they are truly unpaid interns:

- 1) The training, even though it includes actual work done at the facility of the employer, is similar to that which would be given in a classroom setting. The learning experience encompasses a sequence of activities that build upon one another, increase in complexity, promote mastery of basic skills and are coordinated with education provided by the school-based learning component. The training is for the benefit of the student.
- 2) The students do not displace regular employees, and does not result in the employer not hiring someone they would otherwise hire, or does not result in an employee working fewer hours than he or she would have otherwise worked.
- 3) The employer receives no immediate advantage from the activities of the students, and, on occasion, may actually have operations impeded. Any productive work that the trainee performs would be offset by the burden to the employer from the training and supervision provided.
- 4) The student is not necessarily entitled to a job at the conclusion of the training. This doesn't mean you can't offer a job – just that it is not guaranteed.
- 5) The student and employer agree that there are no wages expected or offered, that the experience gained in the setting is sufficient to be of benefit to the student in future endeavors.

Question: We are hiring someone to work at our church, and how do we determine if they are an independent contractor, or an employee?

Answer: The simple answer is this: if you tell them when, where, and how to do the job, and provide all the materials needed, then they are most likely an employee. Independent contractors have the ability to make a profit (or sustain a loss) based on their completion of the tasks they were hired to do.

For example, you might hire someone to perform lawn maintenance at your church. If you provide the lawnmower, furnish the gas, perform all the maintenance on the equipment, and pay them by the hour - they would be considered an employee. If you hire someone to perform lawn maintenance, and pay them a flat fee, they must provide their own equipment, and are paid the same amount whether they complete the job in 2 hours or 5 hours, this would be an example of an independent contractor.

Another common example would be a choir or music director, or musician. If you are providing the music and instruments, setting the schedule for practices and performances (Sunday morning worship/funerals/weddings), they have no ability to make a “profit” or sustain a “loss”. In this case they would be considered an employee of the church - not a contract employee.