It’s Easier Than Ever to Not Compensate Interns, But There’s a Catch.

The U.S. Department of Labor (DOL) recently updated its unpaid internship guidelines, and that’s good news for employers. The reason: Under the DOL’s former guidelines, if even *one* of the six factors it listed wasn’t met, interns were entitled to compensation.

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But, that’s changed: Now, companies are expected to meet a single central standard (determined by seven factors) to clarify who is the “primary beneficiary” in an unpaid intern-employer relationship. That primary beneficiary, of course, must be the intern.

Among those factors are that both parties must understand there is no expectation of compensation or a job offer. And, the company hiring the intern must provide educational training and align that training with the intern’s formal education program and academic calendar.

Regardless of this newer, easier standard, however, unpaid internships remain a complicated subject. John S. Ho, partner and chair of the Occupational Safety and Health Administration practice at law firm Cozen O’Connor’s New York City office, explained just how complicated, saying that, “The analysis [of the primary beneficiary] depends on the unique circumstances of each case, giving businesses more flexibility to make their case that an intern is properly classified based on individual facts.”

Here’s how the guidelines have changed and what these changes

mean for employers:

Both parties can now benefit.

The old standard required that employers derive *no* benefit from the internship. Of course, some unscrupulous employers managed to squeeze valuable, unpaid labor out of their interns.

But for the honest ones, the unrealistic former "no benefit" requirement tied companies' hands and limited the experience that unpaid interns could receive.

The new, seven-factor test, however, is more flexible. It allows employers to benefit from the intern's activities as long as that young person remains the *primary* beneficiary of the relationship. For that to occur, employers must make sure they:

- Provide educational, hands-on training.
- Accommodate the intern's academic commitments.
- Complement the work of their paid employees rather than displace them.
- Conclude the internship once the intern has learned all that he or she can from the experience.

Overall, the employer should provide educational experience that meets specific learning objectives set prior to the internship's start. Providing the intern descriptive materials akin to a university-style curriculum and syllabus might be helpful to ensure that "educational experience."

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In addition,employers should meet with their interns reguarly to discuss their progress, ideas and goals. That way, they can provide a more personalized and educational internship experience.

The experience must be good – but not *too* good.

While reviewing a client's internship program, Joey Price, founder and owner of Jumpstart:HR, LLC, an HR outsourcing and consulting firm in Baltimore, heard multiple negative reviews from interns.

The company the interns had gone to work for made sure the interns received daily lunches, solid work experiences and materials. But, the interns' lack of payment still prevented the program from being a success. The reason was the work's revenue-generating nature.

"I advised my client that any time an 'intern' . . . is focused primarily on revenue-generating activity, it is no longer an internship," Price explained. In essence, the client was teaching interns how to trade, giving them funds to manage and then monitoring the progress of those trades. And this went against the idea of *complementing*, rather than displacing, the work of paid employees – one of the seven factors in the new unpaid internship guidelines.

So, while an intern's experience with a company should be good, it shouldn't be *so* good that it takes the place of paid employees' work. And that means focusing on the educational aspect of the internship above all else.

To do this, Ryan Glasgow, a labor and employment partner at the law firm Hunton & Williams LLP in its Richmond, Va., office, suggested the need to connect internships with college educational programs and the college or university's system for offering academic credit.

Glasgow also said he finds it important for internships to go beyond the work experience offered in the typical office. This could mean adding in classes and educational programs, Glasgow said, so that students receive training in a university-like

environment.

The DOL internship guidelines aren’t mandatory, but they demand your respect, nonetheless.

Because the DOL is not a legislative body, the primary beneficiary intern test it provides is merely a guideline for unpaid internship programs. If there is a grievance, no judge will arbitrate.

Despite that fact, said Dan Kalish, the managing partner at law firm HKM Employment Attorneys LLP’s office in Seattle, Wash., leaders should still proceed with caution. “Even if an employer meets the federal test to have an unpaid internship, it is possible that the employer will not meet the state law requirements to have an unpaid internship; and the employer would have to pay the intern in accordance with the state law,” Kalish told me by email.

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To keep small companies safe and both parties happy, therefore, consult an employment lawyer if you have any doubts about your internship program. Then, go out and create a program that will be an unforgettable experience for those students lucky enough to be accepted to it.

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