

Employer Internship Guide



Empowerment Education Employment

Important Notice

These internship materials were prepared with the input and expertise of the employment law firm of Allen, Norton & Blue, P.A. These documents, however, are not legal advice and are not intended to create an attorney-client relationship. These materials are for education and informational purposes only. If you have any questions or concerns about how the information contained herein applies specifically to your organization or need legal advice regarding the same, please consult with your attorney.

There are thousands of Floridians with disabilities who are willing, able and eager to be productive employees. They just need one thing - *opportunity*.

The Able Trust, also known as the Florida Endowment Foundation for Vocational Rehabilitation, is a public-private partnership foundation whose mission is to be a key leader in providing Floridians with disabilities opportunities for successful employment. In furtherance of its mission, The Able Trust is working with its partners and employers throughout Florida to establish career experiences for people with disabilities. These opportunities allow individuals to obtain additional education, hands-on experience and training in a particular industry or field. The interns are also acquiring marketable skills that can assist them in obtaining future permanent employment. It is the goal of The Able Trust to have qualified, talented individuals with disabilities be matched with the employer needs and objectives for internships. To help better understand the internship process, please review the following question and answer guide.

I. GENERAL INFORMATION

Q: What is an internship?

There is no single definition for “internship” or “intern” because there are many laws, both state and federal, which govern the relationship created when people perform services for others. Generally speaking, however, an internship refers to the type of work experience for entry-level job seekers during which individuals gain valuable experience working in a particular field for a defined term. Internships are hands-on, practical learning experiences. Traditional internships are distinct from the typical employer-employee relationship. Internships are viewed as a form of “experience-driven” education affording participants an opportunity to apply learned skills in a practical setting.

As discussed in more detail, internships can be both paid and unpaid. Your intentions for the intern, their day-to-day tasks, and the structure of your relationship with the intern all help shape the overall experience and the associated rights and obligations. Paid interns are akin to “temporary employees” with the rights and obligations associated with that type of employment relationship. Federal law governs when an internship is unpaid and there are certain guidelines employers must follow to create an actual unpaid internship. (See questions below for more details about paid and unpaid internships).

Q: How can an internship benefit my organization/business?

Internships are immensely beneficial to employers. Internships provide organizations with an opportunity to evaluate a group of individuals for future employment before a permanent offer of employment is made. In the observation of interns during a work environment, employers substantially reduce the risk of a poor hiring choice.

Internships also allow employers to benefit from an influx of eager personnel who bring new ideas and a fresh perspective to the business or organization. Internships provide employers with skilled workers at a modest cost while serving as a valuable recruiting tool. Additionally, people with disabilities are an untapped resource in today's job market. This internship enables an organization/business the opportunity to see firsthand how an individual with a disability can fit into your workforce as a productive contributor.

Q: Are interns with a disability limited in the work that they can perform?

Each individual with a disability is unique and the limitations associated with a disability will vary on a person by person basis. Representatives of The Able Trust and its partners are available to answer any questions or alleviate any concerns regarding the ability of an intern to perform an expected task.

As a general matter, *for any internship program*, interns must be closely supervised by one or more employees of the business or organization. The purpose of the internship experience, and therefore the work performed, should be educational in nature. In other words, interns should primarily be performing work and training akin to attending a vocational school. **Interns are not meant, and cannot, be replacements for full-time employees.** Internships should be designed as a learning experience rather than as an inexpensive or free source of labor.

Q: How long do internships last?

The length of internships is at the discretion of the employer, but typically most interns last for a summer or academic term. An internship should, however, have a definite duration communicated at the onset. Otherwise, it begins to resemble an employment relationship.

Q: Can an internship be part-time?

Yes. Internships can be part-time or full-time. The parameters of the internship should be clearly established at the outset and communicated to all parties.

Q: Can internships be used as an evaluation period for the intern's potential employment?

Although one of the benefits to using interns is the early opportunity to evaluate new talent, this is not the purpose of an internship. The law will consider such arrangement as an employee probationary period which will subject the employer to the variety of employment laws associated with hiring a full-time employee. Interns should be notified at the onset that the internship is not a precursor or promise of future employment.

Q: *Will interns be covered by my worker's compensation and liability insurance?*

Florida's Worker's Compensation statute broadly defines "employee" to include "any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors." There is also no intern exception to Florida's Worker's Compensation law.

As a general matter, persons coming from an academic setting who serve as interns as part of their degree program are not considered "employees" under workers' compensation law. Courts have held that education received in exchange for payment of tuition is not remuneration for purposes of workers' compensation coverage.

When interns receive monetary payment, however, it becomes less clear and more likely that the intern will be treated as an employee for purposes of workers' compensation. If there is any question as to whether an intern is covered, it is recommended that employers err on the side of caution and provide coverage. Employers are encouraged to contact their workers' compensation carrier to obtain more detailed information.

II. PAID INTERNSHIPS

Q: *What is a paid internship?*

In paid internships, interns are generally considered company employees (albeit "temporary employees") who are entitled to minimum wage for all hours worked as well as overtime pay. Notably, interns who receive a small stipend unrelated to services rendered are not considered "paid interns." Employers who wish to compensate their interns on an hourly basis, however, will have more flexibility in assigning work assignments and managing the intern's performance. By designating employees as "temporary", employers can avoid paying benefits to paid interns as discussed below.

Q: *Must interns be paid minimum-wage?*

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

Q: *Are paid interns entitled to 401(k) plans or other benefits?*

As a general rule, no. Most internships are relatively short in duration and many employers have benefit plans that delay eligibility until after the employee's one-year anniversary. Additionally, since internships have set durations, interns are considered temporary employees and as such, they are not entitled to any benefits. Information related to benefits' packages and compensation should be communicated at the outset of any internship.

III. UNPAID INTERNSHIPS

The primary focus of an *unpaid* internship is education. An ideal internship will be both educational and productive, but the principal focus of an unpaid internship should be on education. Unpaid internships must be carefully structured in accordance with the requirements of the Fair Labor Standards Act, the federal statute that governs wages and hours of work. The U.S. Department of Labor considers the legality of unpaid internships pursuant to the following six factors:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which 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; and,
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

Each of the above factors must be met in order for an unpaid internship to comply with state and federal law. Otherwise the interns will qualify as employees and must be paid at least minimum wage plus overtime for all hours worked in excess of forty. If your primary motivation in using unpaid interns is to achieve free additional labor, you are likely to be in violation of state and federal labor laws.

Q: Can an intern be paid a stipend and still be considered an “unpaid internship”?

Yes. Companies are able to pay their interns a small stipend without running afoul of the legal requirements for unpaid internships. Thus, if an employer pays a stipend of a predetermined amount that is not tied to the performance of any services rendered by the intern, the internship is still considered an “unpaid internship.” If this stipend payment is associated with work performance or is of more than a nominal amount, it may be considered a “wage” that must meet the requirements under wage and hour laws. All issues regarding the compensation of interns should be communicated at the outset of any internship. If the stipend is for more than \$600/year, the intern will need to receive an IRS Form 1099.

Q: Will unpaid interns be considered employees under anti-discrimination laws?

Generally, no. Unpaid interns who are not considered employees will typically not be covered by federal laws that apply to “employees.” The Equal Employment Opportunity Commission has suggested such laws are limited to individuals who receive “significant remuneration” for services rendered. Inconsequential compensation generally afforded to unpaid interns may not be enough to qualify under the law. As a practical matter, however, all interns should be treated equitably and fairly irrespective of age, race, gender, religion, disability, or national origin.

Q: What are my obligations under the Americans with Disabilities Act (ADA)?

The ADA applies to all employers with fifteen or more employees. Under the ADA, those with a qualifying disability must be reasonably accommodated unless doing so would cause undue hardship. There are several avenues for getting assistance for determining an accommodation for an employee from local service providers to numerous online resources to state agencies.

Q: Can unpaid interns receive academic credit?

As described above, interns are much more likely to be deemed non-employees if they receive academic credit or participate in school sponsored internships 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.

Q: *Are there liability concerns associated with employing interns?*

There are no liability concerns specific to using interns. Internships should be a mutually beneficial experience for the student and the organization/business. Provided that the internship program is well-structured and designed for the educational benefit of the intern, internship programs can be a highly rewarding experience for all parties involved.