

## *Summer Time in the City*

Sunshine, Sandals, Sea Breezes...and Summer Interns. With Memorial Day behind us, there is an influx of college and graduate students in the city beginning summer internships. Companies who are bringing on unpaid summer interns should be sure that their unpaid intern program complies with federal and New York State guidelines.



There is no bright-line test as to whether an intern qualifies as an employee and is therefore subject to minimum wage and overtime. Rather, the current standards consider the economic reality of the intern-employer relationship to determine which party is really the primary party benefiting from an internship programs to determine whether an internship should be paid or can be unpaid. The U.S Department of Labor issued guidance in January 2018 reflecting a body of case law that had developed and set forth specific set of standards to consider if the intern-employer relationship truly qualifies to be unpaid. New York also has established standards for consideration.

### **The following are some criteria to consider:**

1. Is there an expectation of compensation or any other remuneration or benefits?
2. Does the intern's work complement paid employees' work, and provide educational benefit similar to what the intern would receive in school?
3. Is the intern receiving academic credit?
4. Is the internship during a limited period optimized for learning and scheduled with recognition of academic commitments?
5. Is there an expectation or promise of a job at the conclusion of the internship?
6. Is there a written agreement between the employer and intern establishing that no remuneration will be provided and that there is no guarantee of a job at the conclusion of the internship?

If review of these factors results in a determination that the company is the primary beneficiary of the relationship, then the company should consider treating the intern as a paid employee subject to minimum wage and overtime. If the company determines that an unpaid internship is appropriate after review of these factors, then make sure to document in writing with the intern.



If you need assistance evaluating your summer internship program or in drafting documents, please reach out to your MSF contact or our Employment Group for assistance.

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