



April 6, 2006

FLSA2006-12

Dear *Name**,

This is in response to your request for an opinion regarding whether students in a university's externship program are considered employees under the Fair Labor Standards Act (FLSA). It is our opinion that the program participants are not employees of the companies that sponsor them.

The university operates an externship program designed to expose students to various careers so they are better able to make wise career decisions. In the program, the students spend one week "shadowing" an employee at a sponsoring employer. The students are not compensated for time spent at the sponsoring employer, nor do they receive college credit for their time. The purpose of the program is purely educational, and the sponsors invest significant effort into designing experiences for the externs. The students do not generally perform work for the employers, but may perform small office tasks or assist with a project. Because of the short duration of the program, the sponsors do not derive any benefit from the externs' labor, and the externs do not displace any regular employees. You state that the only benefit to the sponsor, aside from satisfaction in assisting students' career development, is the potential opportunity to screen future interns or employees. The externs are not guaranteed future internships or employment from their participation in the program.

The FLSA provides minimum wage and overtime protection to those employed within the meaning of the Act. FLSA section 3(g) states that to "employ" means to "suffer or permit to work." The Supreme Court in *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947), observed that this definition "was obviously not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another." Based on *Portland Terminal*, the Wage and Hour Division (WHD) has developed six factors to evaluate whether a trainee, intern, extern, apprentice, graduate assistant, or similar individual is to be considered an employee. If all of the following six factors are met, then an employment relationship does not exist:

1. The training is similar to what would be given in a vocational school or academic educational instruction;
2. The training is for the benefit of the trainees or students;
3. The trainees or students do not displace regular employees, but work under their close observation;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

See Wage and Hour Opinion Letter May 17, 2004; Field Operations Handbook § 10b11 (copies enclosed). In the typical externship or internship program, where the work activities are simply an extension of the student's academic program, these factors often are met and an employer-employee relationship does not exist. If no employment relationship exists, the provisions of the FLSA do not apply.



Based upon the information you have provided, it is our opinion that the program does not create an employment relationship between the extern and the sponsor. The training the externs receive is a practical application of material taught in a classroom; therefore, it qualifies as training similar to what would be given in a vocational school or academic educational instruction. The training primarily benefits the students because the students participate in the program to observe the practical application of the classroom instruction in the workplace, thus fulfilling the second requirement. The students' participation for only one week, the virtual absence of actual work, and the sponsor's need to assign a shadowed employee means the sponsor does not receive any tangible benefit and may in fact lose productive work from the employee assigned to the student, satisfying the fourth requirement. Because the externs "shadow" an employee, they do not displace any regular employees. Finally, the students are clearly told that they will not receive a job at the conclusion of the externship and that they will not receive compensation for the week. Thus, there is no employment relationship between the externs and the sponsors or the university. Therefore, the externs are not entitled to compensation under the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures:
Wage and Hour Opinion Letter May 17, 2004
FOH §§ 10b11

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)*