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## Intern or Employee? How to Tell the Difference and Why it Matters

Internships — also referred to as externships, applied learning, service learning, co-ops, practicums, among many other terms — are receiving national attention. This attention is stemming both from increasing emphasis on the value of students' experiential learning and from legal challenges to interns' employment status. As the University moves forward in continuing to implement its experiential learning goals and initiatives in support of K-State 2025, there are several considerations that we encourage you to keep in mind.

The central focus of internship legal challenges is on whether an intern is in reality an employee. Many consequences arise when someone is legally considered to be an employee, as opposed to, for example, an independent contractor or intern. These include application of applicable minimum wage requirements, workers compensation and other benefits coverage, anti-discrimination laws, and liability of the employer. These questions often arise in the context of unpaid internships or in internships which provide stipends or other remuneration different than standard employees.

The Fair Labor Standards Act — the federal law that includes requirements for minimum wage and overtime — defines an employee as a person who an employer "suffers or permits to work." To determine whether an intern (sometimes referred to as a trainee) is engaged in "work" — and is therefore an employee — courts look at whether the employer or the intern is the primary beneficiary of the relationship.

The primary beneficiary inquiry is based on the totality of the circumstances under several factors. The more factors that demonstrate a benefit to the employer, the more likely the intern will be considered an employee. The following are commonly considered in the primary beneficiary inquiry:

a) whether the training is similar to that given in an educational environment;

b) whether the intern displaces paid employees, i.e., without the intern, would the employer hire an employee to do the work? Or are the intern's duties similar to the work of other employees?

c) whether the employer derives substantial immediate advantage from the activities of the intern;

d) whether the intern is entitled to a job at the conclusion of the internship;

e) whether the employer and the intern understand that there is no expectation of compensation for the internship;

f) whether the internship is connected to a formal education program or receipt of academic credit;

g) whether the internship corresponds with the academic calendar, accommodating the student's school commitments; and

h) whether the duration of the internship is limited to the period in which the intern is provided with beneficial learning.

Internship programs intersect with the University in a variety of ways. For risk management purposes, internship programs can typically fit into one of three categories:

(1) University-operated: those programs where student interns engage in activity under the supervision of a University employee acting in the context of his/her University employment;

(2) University-sponsored: those programs where the student intern engages in activity under the supervision of a third party, but the University is involved in the facilitation and other aspects of the program; and

(3) Independent: programs where the student intern engages in activity under the supervision of a third party without involvement by the University.

University-operated programs should be assessed to determine whether the primary beneficiary of



## Featured FAQ

**Q: May I accept a gift or special discount offered to “all K-State employees” on meals, travel, entertainment, or other goods or services?**

A: Generally, no.

Under the State Governmental Ethics Act, accepting such gifts or discounts in your personal capacity is strictly prohibited, unless the discount is part of your compensation package (such as discounts on K-State event tickets, tuition assistance, and other employment benefits).

In addition, if any gifts or discounts are offered to all State employees, they may be accepted. Furthermore, you may accept a gift or discount on behalf of your department that becomes the property of the State and benefits the State (such as work-related travel expenses where your department would pay the expenses), so long as it is not from any person known to have a special interest in you or K-State, when you know or should know that a major purpose of the donor in granting the gift could be to influence the performance of your official duties.

Learn more about the [rules for State Employees Concerning Meals, Gifts, Entertainment & Travel](#).

### Visit our website:

[k-state.edu/generalcounsel](http://k-state.edu/generalcounsel)

Our website gives an introduction to the services we provide and addresses frequently asked questions. It also houses a list of resources for easy access to laws and policies applicable to University operations.

## Intern or Employee? How to Tell the Difference and Why it Matters continued

the program is the intern or the University. If the latter, the intern should be treated as a University employee and go through all standard processes associated with University employment. If the intern is the primary beneficiary, the student should sign an “Applied Learning Agreement” in which the student acknowledges the educational goals of the program and addresses the above-listed factors. Our office has templates available that we encourage you to use, but the provisions included will depend on the circumstances of the particular program. The most complex situations are internships where the intern receives some form of limited payment, such as a stipend. A non-employee intern may not be paid for services performed on behalf of the University, but in some limited circumstances, can be paid a training grant which aids the student in the pursuit of his/her education. We encourage you to contact our office for advice if your program involves remuneration to non-employee interns.

For University-sponsored programs, the University should have an agreement in place

with the third party and with the student intern, which sets out the goals of the program, the scope of responsibilities of each party, and addresses the factors listed above to the extent possible. These agreements should be submitted for review by our office in accordance with PPM 3070, and we can assist in developing approved templates for use in recurring programs.

For independent programs, the student should maintain responsibility for facilitating and making all arrangements for the program. The limited involvement by the University in these programs — if any — should focus only on academic components, such as a professor receiving and grading an academic product the student submits based on his/her experience. The more involved the University gets, the more the internship may be viewed as a University-sponsored program.

We encourage you to think about student internship programs both in the context of the value they provide to the students and in relation to the University’s potential corresponding obligations. Let us know your thoughts, questions and concerns — we are here to help!

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## Save the Date!

The Office of General Counsel will host an open house from 3 to 5 p.m. on Tuesday, Dec. 15, at 111 Anderson Hall. We welcome all members of the University community to stop by and enjoy light refreshments while celebrating the end of the semester. Mark your calendar now!

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## Resource Reminders

Curious as to the University’s Congressional District? Working on a contract that requires the University’s Dun & Bradstreet number or FEIN? Drafting a grant proposal and need to include K-State’s Human Subjects Research Assurance number? The Office of Research & Sponsored Programs has helpfully listed these and other frequently used numbers in one convenient webpage: [k-state.edu/orsp/preaward/propinfo.html#fun](http://k-state.edu/orsp/preaward/propinfo.html#fun). Bookmark it today; save time tomorrow!

The Copyright Consultation Service at K-State Libraries provides guidance to faculty, staff and students on the use of copyrighted material. For more information, see: [k-state.edu/copyright/](http://k-state.edu/copyright/).

### Quote of the Day:

*“By three methods we may learn wisdom: First, by reflection, which is noblest; Second, by imitation, which is easiest; and third by experience, which is the bitterest.”*

— Confucius

### About this Publication:

This newsletter is designed to serve as a practical informational tool, bringing you topics of interest and practical tips. It should not be relied on as a substitute for legal advice. Laws, regulations and policies change frequently, and legal advice requires careful consideration and application of all relevant facts. If you have legal questions or need legal advice concerning any University matter, please contact the Office of General Counsel directly at 785-532-5730 or [attys@k-state.edu](mailto:attys@k-state.edu).