Volunteering in the United States

For International Students

American University ◆ Building a Global University ◆ International Student and Scholar Services

International students in F-1 or J-1 status may be eligible to work legally in the United States **with written permission** from the US Citizenship and Immigration Services (USCIS) or the International Student & Scholar Services (ISSS).

Both F-1 and J-1 students are eligible to work on-campus after their program begin-date. F-1 students are eligible for off-campus employment in their field of study after enrolling full-time for two semesters (fall and spring). J-1 exchange visitors are eligible for academic training/employment in their field of study before or after completion of their studies. For more information about the eligibility requirements or the employment authorization process, please consult with ISSS.

The general assumption that most students and employers make is that if a position is not paid, it is not considered as employment (or work) and thus it doesn't require employment authorization. However, such assumption is dangerous and often wrong, because some of these unpaid positions may fall outside the definition of a truly volunteer activity.

If you are planning to volunteer or engage in a non-credit bearing unpaid internship, you need to consider the following guidance and speak with an immigration attorney if you need any further legal advice.

Who is considered an employee, and who can be considered as a volunteer?

Section 3(e) of the FLSA provides the following definition for an employee: the term *"employee"* means any individual employed by an employer, including any individual employed by the government of the United States, United States Postal Service or the Postal Rate Commission etc. The term "employee" does not include volunteers who perform services for public agency, such as a state, a political subdivision of a state, or an interstate government agency if the individual receives *no compensation* for services.

The Fair Labor Standards Act (FLSA) defines a volunteer as follows: *"an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours."* *(29 CFR § 553.101, Application of the Fair Labor Standards Act to Employees of State and Local Governments).*

What is considered a legitimate unpaid internship/volunteer position?

The DOL Wage and Hour Division has established a six factor test to help determine whether individuals who participate in "for-profit" private sector internships or training programs may do so without compensation. Therefore, if work is legitimately "volunteer training", no compensation or work authorization is required, but if it is "employment", international students **must** obtain employment authorization before beginning work.

Please note that **all six criteria must be satisfied** for an unpaid internship or a volunteer position to qualify as "volunteer training":

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; *(this is the most problematic factor to meet in most cases)*

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.

What is considered compensation?

US Citizenship and Immigration Services (USCIS) defines compensated employment as work performed in exchange for a benefit. USCIS would consider employment authorization necessary if *any* of the following circumstances hold true:

1. if you receive a salary, hourly wage, tips, bonuses, or if the employer covers your tuition, fees, books, supplies, transportation, accommodation expenses or any other benefit in exchange for work performed, or

2. if the individual normally holding your position receives payment.

What should I do if I decide to pursue the volunteer/unpaid internship without employment authorization?

If you think the unpaid internship or volunteer position meets the six-factor test and you would like to pursue it without obtaining employment authorization, you should obtain a written documentation from the employer before you start the internship/volunteering indicating that the position you will hold is a truly volunteer training position and that you will not obtain any form of compensation.

This document can be used as an evidence of your relationship with the employer if the employer is audited by the Wage and Hour Division of the DOL or if DHS requests evidence of your employment history in the United States.

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References used to prepare this handout include:

1. The Federal Labor Standards Act (FLSA), available at: *http://www.dol.gov/elaws/flsa.htm*.
2. Department of Labor's Six-factor Test, available at: *http://www.dol.gov/whd/regs/compliance/whdfs71.pdf*.
3. Handout on Foreign Students as Trainees and Volunteers by Mark Rhoads, McCandlish Holton Attorneys at Law, *available upon request*.

Disclaimer: The materials in this handout have been prepared for general informational purposes only. They do not constitute legal advice or serve as a substitute for legal counsel.

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