

Work Based Learning Toolkit for Washington State Employers

Manual for employers to provide meaningful work-based learning
opportunities to students

AWB Institute

In Partnership with the Washington State Board of Community and Technical Colleges

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Description and Examples of Work Based Learning

Internship Description

The National Association of Colleges and Employers (NACE) defines an internship as “a form of experiential learning that integrates knowledge and theory learned in the classroom with practical application and skills development in a professional setting. Internships give students the opportunity to gain valuable applied experience and make connections in professional fields they are considering for career paths; and give employers the opportunity to guide and evaluate talent.”

<http://naceweb.org/advocacy/position-statements/united-states-internships.aspx>

Examples of Internships:

For Credit Internship

Students must consult their school/academic department prior to the start of an internship if they wish to receive credit for an internship. It usually involves a partnership between the student, business, and a school faculty member.

Full Time Internship

Full time internships tend to be paid. They are most common in the summer when students can be fully committed to their internship. Full time internships allow for the most extensive submersion for an intern in a particular company.

Summer Internship

Summer internships usually last eight to twelve weeks and can be either full or part time. They can also be completed for credit but must be cleared with the intern's school first. Summer internships allow for an in-depth experience of what it is like to work for a specific company.

Part Time Internship

Part time internships are usually given to students who are enrolled in school during the same time. They can be unpaid and can vary in duration. They are a great way for a student to be exposed to what working in a company looks like.

Paid Internships

Paid internships should be the first choice for a company to consider. They tend to be full time positions and offer the most in-depth experience for the intern. Paid interns can be treated as a normal employee with the option to hire a fully trained employee once the internship ends.

Non-Paid Internships

Non-paid internships tend to be utilized by non-profit companies and startup companies that may not have sufficient funds to pay their interns. Although monetary incentives are not present, this type of internship still grants interns the necessary knowledge needed in their field of study and allows companies to have extra resources available. Please refer to the section on WA L&I Internship Regulations, Unpaid Internships 101, for specific guidelines.

Apprenticeships

Washington State Department of Labor & Industries describes an Apprenticeship as “a combination of on-the-job training (OJT) and related classroom instruction under the supervision of a journey-level craft person or trade professional in which workers learn the practical and theoretical aspects of a highly skilled occupation. After completing an apprenticeship program, the worker's journey-level status provides an additional benefit of nationwide mobility at journey level scale.”

<http://www.lni.wa.gov/TradesLicensing/Apprenticeship/default.asp>
<https://lni.wa.gov/licensing-permits/apprenticeship/become-an-apprentice>
<https://lni.wa.gov/licensing-permits/apprenticeship/apprenticeship-preparation>

Teacher Externships

Teacher externships are work based learning and professional development opportunities for both teachers and employers. According to the FHI 360 Group, teacher externships “... are hands-on learning experiences that help teachers enrich their classroom pedagogy by using real-world applications of the academic content they teach.” Externships allow teachers to gain insight to which they can pass along to their students, the future workforce.

Externships usually take place in the summer, at 30-40 hours a week. The content of the externship should be agreed upon before and lesson plans should be created by teachers during the duration of the externship and should be shared with the employer and fellow teachers.

<https://wbl.fhi360.org/teacher-externships/>

Job Shadowing

Job shadowing places a student with an employer to gain firsthand knowledge of the workplace. “Based on students’ interests in specific careers and/or employers, job shadows can help students learn more about the nature of jobs and work environments as well as the education and training required to enter them.”

The format of job shadows can vary greatly, giving more freedom to both the student and employer to tailor the experience to match the need of the student with the capabilities of the employer. Job shadows can last only a few hours or be for the whole workday. There is also the possibility to have more than one employee be shadowed by students, allowing them to see different points of views in the company.

<https://wbl.fhi360.org/job-shadows/>

Benefits of Work Based Learning for Students and Businesses

Benefits for Businesses

Work Based Learning Benefits for Employers:

- A cost-effective opportunity to evaluate a potential future employee, a pipeline for candidates
- Access to students with special skills and/or knowledge
- A way to gain short term talent to assist current employees
- Enthusiastic, innovative workers who can contribute new ideas based on their academic learning
- The personal satisfaction of fulfilling a professional responsibility in helping students progress in their career path
- Enhanced visibility for your organization on college campuses

<http://www.bothell.washington.edu/careers/employers/internship-guidelines-for-employers>

How Hiring an Intern Benefits Your Company:

- Remain competitive within your industry
- Gain short-term talent
- Increase diversity within your organization
- Offer management experience to employees working as intern supervisors
- Provide full-time employees more time to focus on higher priority tasks
- Begin training potential full-time employees
(more than 50% of interns accept an employment offer from their host company!)
- Mentor and cultivate our future workforce leaders
- Provide a student with a rich learning experience
- Influence school curriculum
- Encourage students to stay in their local community
- Use social media to connect with target audiences
- Market your company via word of mouth

<https://www.washingtonworkforceportal.org/employers>

Benefits for Students

Work Based Learning Benefits for Students:

- Provides a full and realistic view of working at a business
- Integrates academic preparation with practical application and skill development in the workplace
- Provides hands-on work experience
- An opportunity to network with professionals in one's field of interest
- A chance to explore career options and develop transferable skills

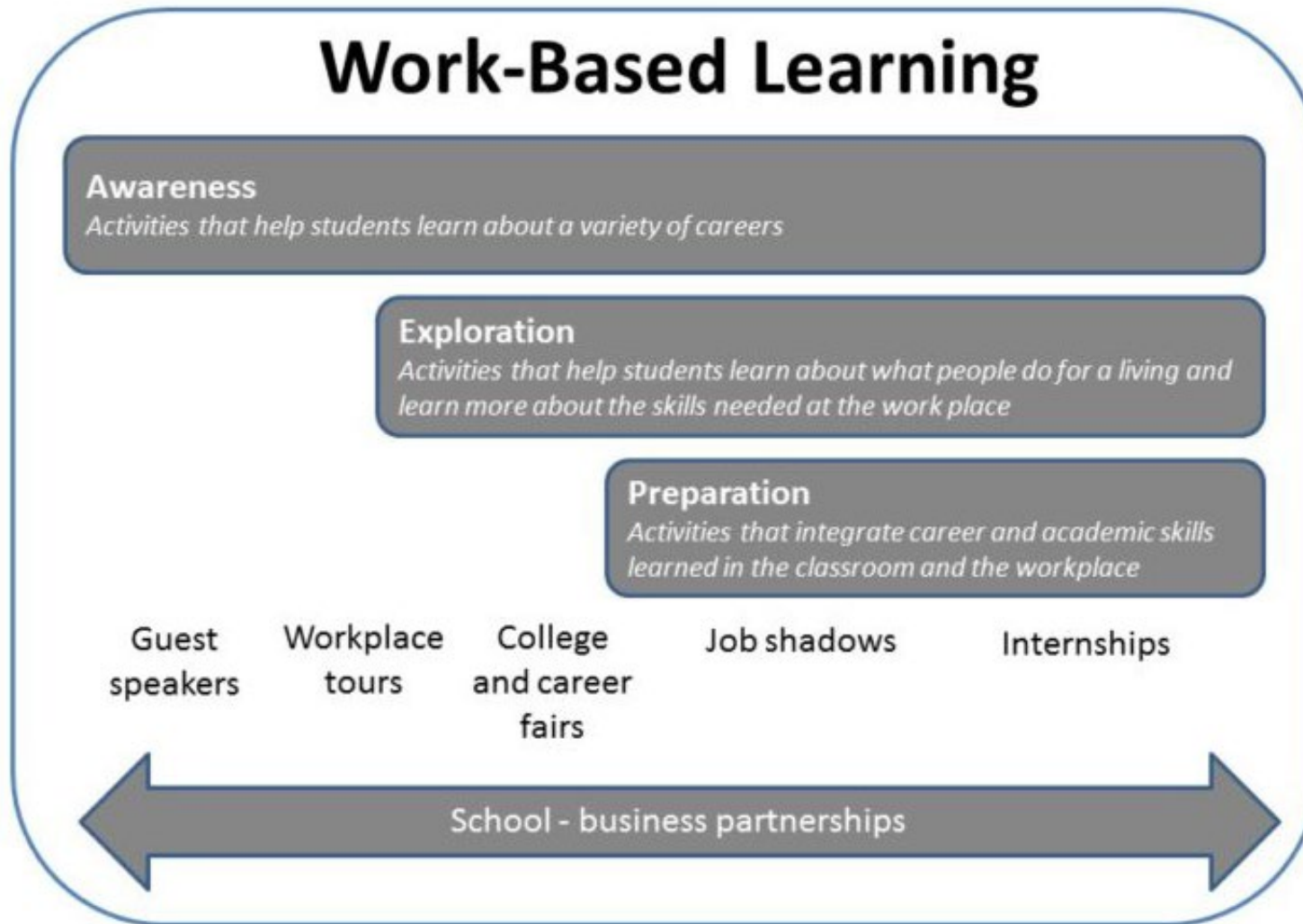
<http://www.bothell.washington.edu/careers/employers/internship-guidelines-for-employers>

Why Intern:

- Earn school credit
- Fulfill educational requirements
- Learn how to apply academic coursework to the professional world
- Examine and verify career interests
- Explore different organizational departments
- Uncover talents
- Discover ideal job aspects
- Develop responsibility and new, transferable skills
- Grow your professional network
- Gain possible full-time employment from internship

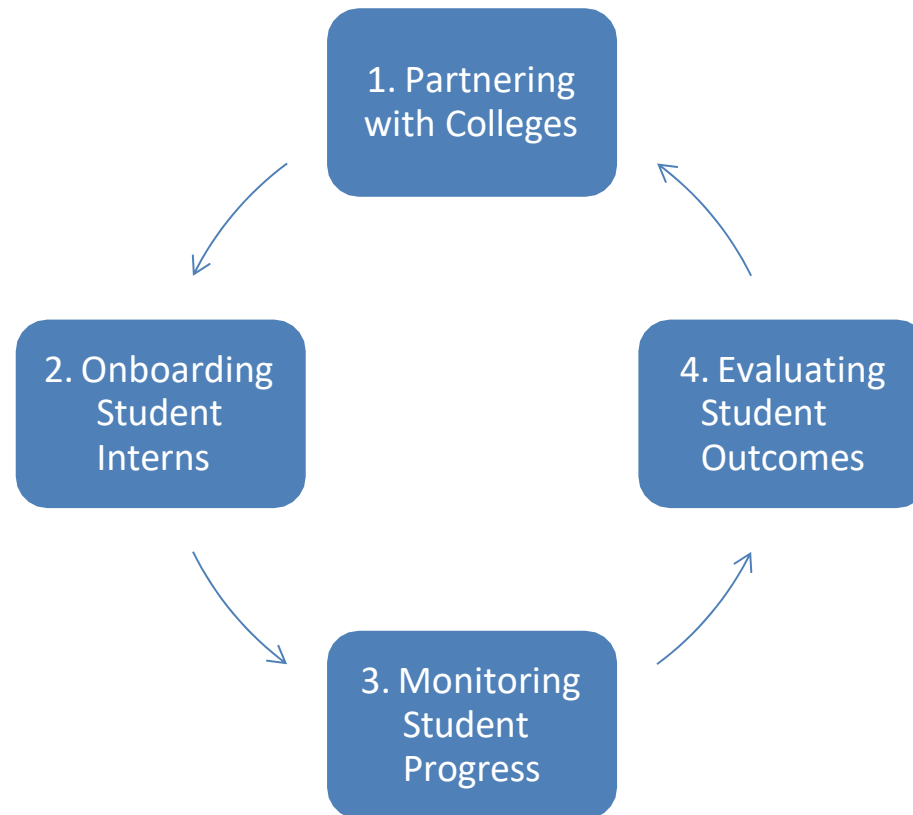
<https://www.washingtonworkforceportal.org/students>

Model For Work Based Learning

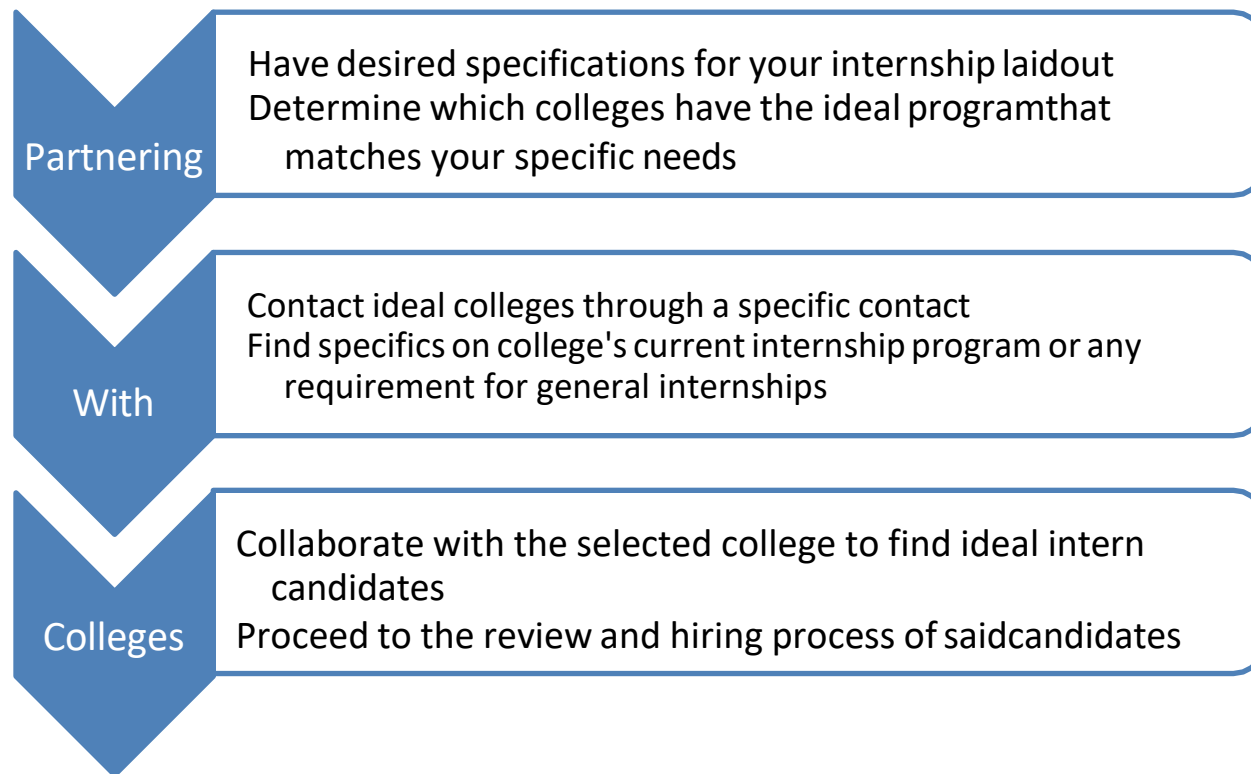


<https://wbl.fhi360.org/introduction-to-work-based-learning/>

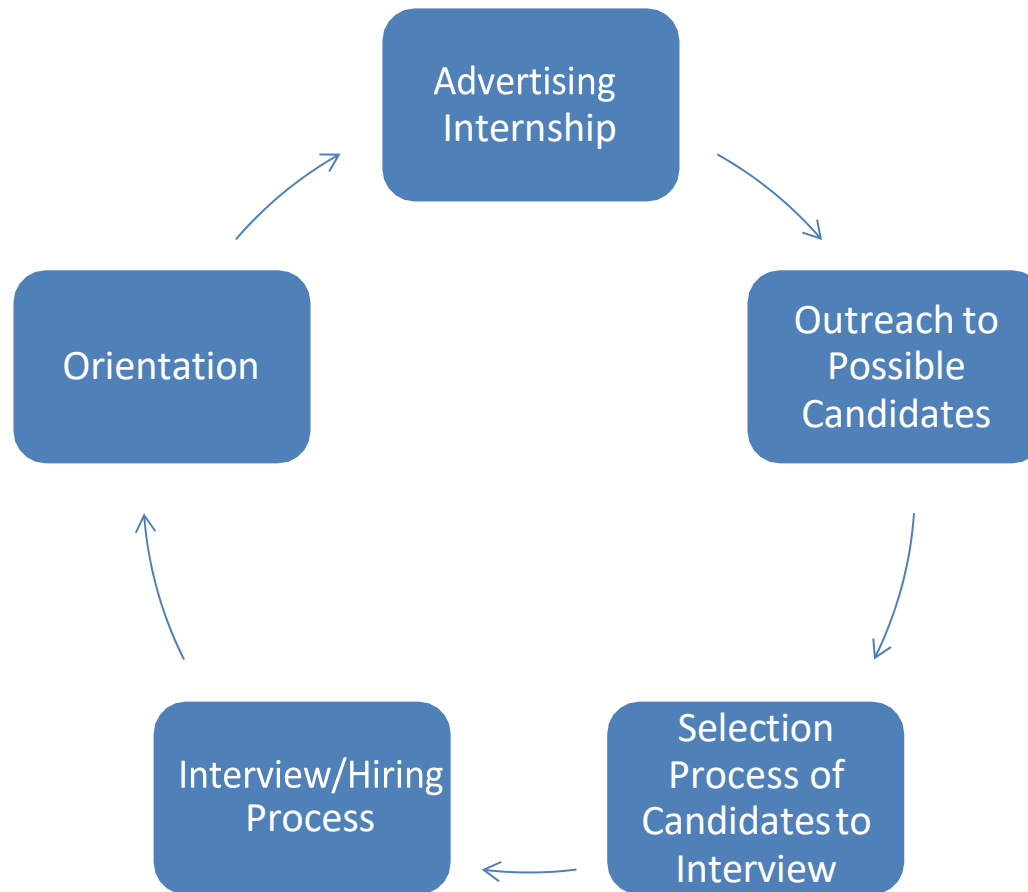
Internship Process



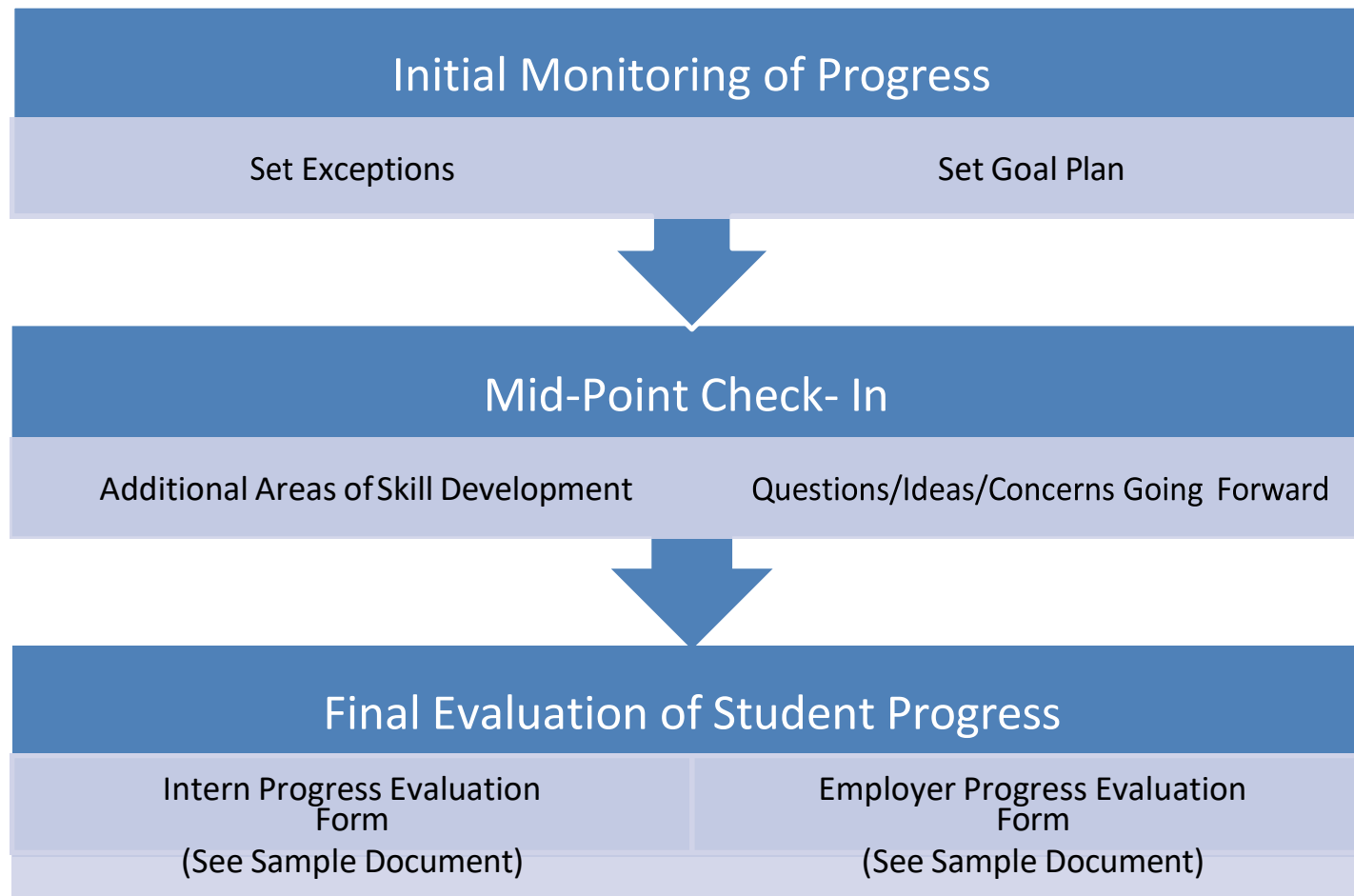
Partnering With Colleges



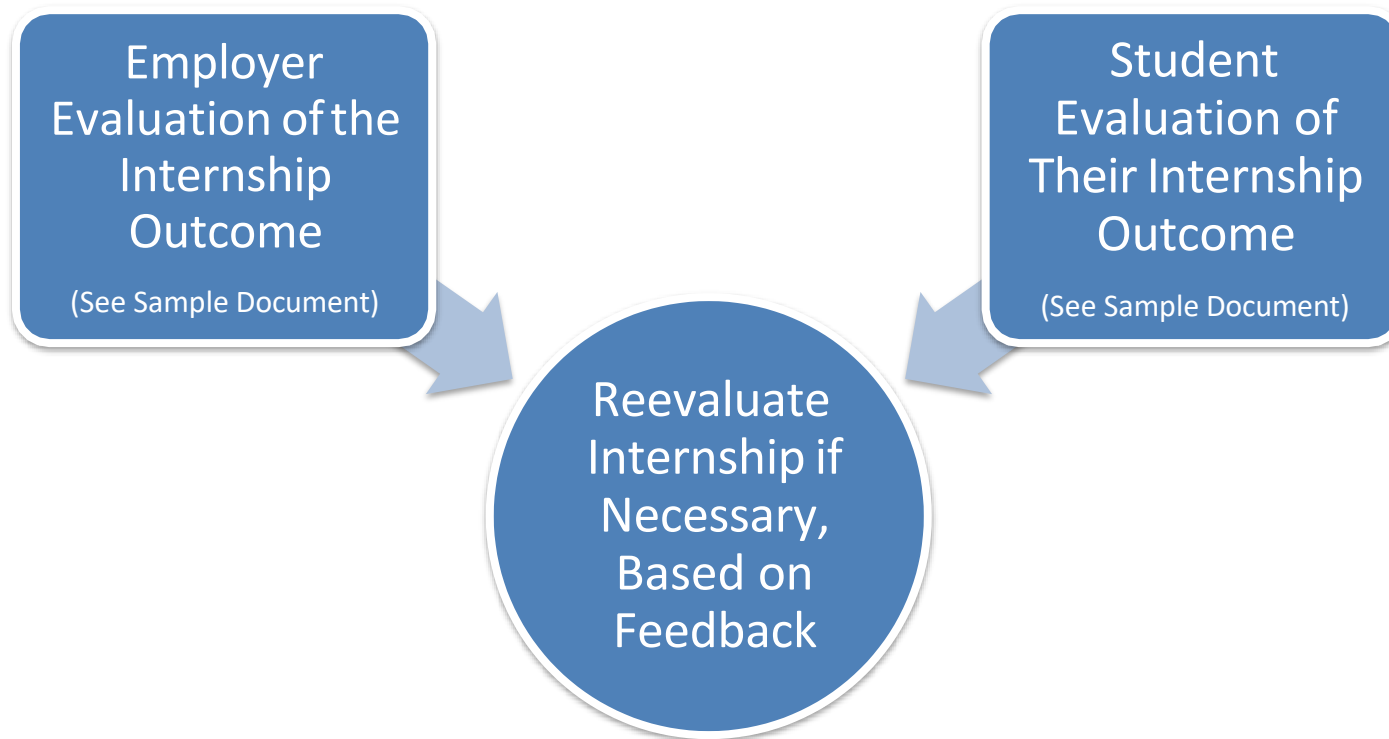
Onboarding Student Interns



Monitoring Student Progress



Evaluating Student Outcomes



Internship Agreement Between Student & Employer

Intern Name: _____

Title of Internship Position: _____

Duration of Internship: Start: _____ End: _____

Hours Per Week: _____

Pay Amount (If Applicable): _____

Employer/Company Name: _____

Phone: _____

Company Website: _____

Phone: _____

Address: _____

Name of Supervisor: _____

Phone: _____

Email: _____

Duties to be performed: _____

Experience to be gained by the participating intern: _____

Supervisor Signature

Intern Signature

Date

Date

Internship Placement Reporting Form to the School

Student Information

Name: _____

School: _____

Field of Study: _____

Student I.D.: _____ Phone: _____

Email: _____

Student Internship Information

Internship Title: _____

Hourly Rate (If Applicable): _____

Primary Duties: _____

Academic Credit (yes or No): _____

If Yes, Department and Course Number: _____

If Yes, How many credit hours? _____

How was Position Secured? _____

Semester/Quarter

Semester/Quarter: _____ Hours per Week: _____

Start Date: _____ End Date: _____

Employer (Internship Provider) Information

Employer: _____

Contact Name & Title: _____

Contact Email: _____

Contact Address: _____

Contact City, State, Zip: _____

Contact Phone: _____

Intern Orientation Checklist

Review Organization and Department Missions
<p>Explain Need to Know Items</p> <ul style="list-style-type: none"> <input type="checkbox"/> Parking <input type="checkbox"/> Workstation <input type="checkbox"/> Specific Work Dates/Times <input type="checkbox"/> Office Hours/Breaks <input type="checkbox"/> Pay Period and Payment Information <input type="checkbox"/> Receive Contact Information from Intern <input type="checkbox"/> Computer Use Policy <input type="checkbox"/> Equipment Policy
<p>Review the Internship</p> <ul style="list-style-type: none"> <input type="checkbox"/> Job Description <input type="checkbox"/> Expectations <input type="checkbox"/> How the Internship Relates to the Company <input type="checkbox"/> Action Plan
<p>Review Company Standards</p> <ul style="list-style-type: none"> <input type="checkbox"/> Performance standards <input type="checkbox"/> Attendance and Punctuality <input type="checkbox"/> Conduct in Corporate Environment <input type="checkbox"/> General Appearance and Expected Attire
<p>Explain the Work Process</p> <ul style="list-style-type: none"> <input type="checkbox"/> Job Authority and Responsibility <input type="checkbox"/> Resource Assistance <input type="checkbox"/> Weekly Meeting <input type="checkbox"/> Open Door Policy <input type="checkbox"/> End of Internship Evaluation
<p>Orient the Intern to the Work Area</p> <ul style="list-style-type: none"> <input type="checkbox"/> Notify All Staff to the New Intern <input type="checkbox"/> Give a Tour <input type="checkbox"/> Introduce the Intern <input type="checkbox"/> Make Personal Introductions and Explain Work Relationships

Internship Progress Evaluation by Intern

To be filled out by the intern reviewing their personal progress made during the internship

Intern Name: _____ Date: _____

Rating Scale

5 – Far exceeded all expected outcomes

4 – Exceeded expected outcomes

3 – Met expected outcome

2 – Met some expected outcomes

1 – Did not meet most expected outcomes

Work Performance Area	Rating
Instructions Comments:	
Quality Comments:	
Planning Comments:	
Communication Comments:	
Attendance Comments:	
Technical Skills Comments:	
Attitude Comments:	
Reliability Comments:	
Professional Appearance Comments:	

Internship Progress Evaluation by Employer

To be filled out by the intern reviewing their personal progress made during the internship

Employee Name: _____ Date: _____

Rating Scale

5 – Far exceeded all expected outcomes

4 – Exceeded expected outcomes

3 – Met expected outcome

2 – Met some expected outcomes

1 – Did not meet most expected outcomes

Work Performance Area	Rating
Instructions Comments:	
Quality Comments:	
Planning Comments:	
Communication Comments:	
Attendance Comments:	
Technical Skills Comments:	
Attitude Comments:	
Reliability Comments:	
Professional Appearance Comments:	

Intern Exit Survey of Internship Outcomes

Name: _____

Email: _____

Phone: _____

Address: _____

Start Date: _____ End Date: _____

Hours Per Week: _____

Did you find this internship successful? Yes___ No___

Was this internship a good learning experience? Yes___ No___

Were the details of this internship explained thoroughly? Yes___ No___

Did you receive enough training to perform the internship? Yes___ No___

Did the supervisor provide constructive feedback? Yes___ No___

Did this experience help you make a choice for your career goals? Yes___ No___

If no was answered for any of the questions above, please explain:

What did you like most about the internship?

What did you like least about the internship?

What actions did you enjoy the most?

What actions did you enjoy the least?

Employer Internship Outcomes Evaluation Form

Supervisor: _____

Intern: _____ Intern's School: _____

Start Date: _____ End Date: _____

1. Is this current internship program viable for future internship opportunities?

2. Are there any areas of concern or areas that need to be changed in the current program?

3. Did the intern meet all expectation given? Should future expectations be changed?

4. What aspects, if any, need to be added to improve the next internship?

4. Resources for the Community and Technical Colleges

1. Bates Technical College
 - a. <https://www.batestech.edu>
 - b. <https://www.batestech.edu/job-services-center/>
2. Bellevue College
 - a. <http://www.bellevuecollege.edu/>
 - b. <http://depts.bellevuecollege.edu/careers/connect-career-management-system/>
3. Bellingham Technical College
 - a. <http://www.btc.ctc.edu/>
<https://bellinghamtechnical.lightcastcc.com/>
4. Big Bend CC
 - a. <http://www.bigbend.edu/>
 - b. <https://www.bigbend.edu/student-center/career-services/>
5. Cascadia College
 - a. <http://www.cascadia.edu/>
6. Centralia College
 - a. <http://www.centralia.edu/>
 - b. <https://www.centralia.edu/funding/student-jobs/>
7. Clark College
 - a. <http://www.clark.edu/>
8. Clover Park Technical College
 - a. <http://www.cptc.edu/>
 - b. <https://www.cptc.edu/financial-aid/work-study>
9. Columbia Basin College
 - a. <http://www.columbiabasin.edu/>
10. Edmonds CC
 - a. <http://www.edcc.edu/>
 - b. <http://www.edcc.edu/hr/Volunteer.html>
11. Everett CC
 - a. <http://www.everettcc.edu/>
 - b. <http://www.everettcc.edu/administration/admin-services/hr/internships>
12. Grays Harbor College
 - a. <http://www.ghc.edu/>
 - b. Criminal Justice Only
13. Green River College
 - a. <http://www.greenriver.edu/>
 - b. <http://www.greenriver.edu/academics/workforce-education.htm>

14. Highline College
 - a. <http://www.highline.edu/>
 - b. <https://connections.highline.edu/>
15. Lake Washington Institute of Technology
 - a. <http://www.lwtech.edu/>
 - b. <https://www.lwtech.edu/campus-life/career-services/>
16. Lower Columbia College
 - a. <http://www.lowercolumbia.edu/>
 - b. <http://lowercolumbia.edu/careerservices/index.php>
17. North Seattle College
 - a. <https://northseattle.edu/>
 - b. <https://northseattle.edu/internships>
18. Olympic College
 - a. <http://www.olympic.edu/>
 - b. <https://www.olympic.edu/student-life-support/career-center>
19. Peninsula College
 - a. <http://www.pencol.edu/>
20. Pierce College: Fort Steilacoom
 - a. <http://www.pierce.ctc.edu/>
21. Pierce College: Puyallup
 - a. <http://www.pierce.ctc.edu/>
 - b. puycareer@pierce.ctc.edu
22. Renton Technical College
 - a. <http://www.rtc.edu/>
 - b. <https://rtc.edu/workforce-education-funding#>
23. Seattle Central College
 - a. <http://www.seattlecentral.edu/>
 - b. http://www.seattlecentral.edu/coop/intern_stuinfo.php
24. Shoreline CC
 - a. <http://www.shoreline.edu/>
 - b. <http://www.shoreline.edu/workforce/>
25. Skagit Valley College
 - a. <http://www.skagit.edu/default.asp>
26. South Puget Sound CC
 - a. <http://www.spscc.ctc.edu/>
27. South Seattle College
 - a. <http://www.southseattle.edu/>
 - b. <http://www.southseattle.edu/worksource/>

28. Spokane CC
 - a. <http://spokanecc-csm.symplicity.com>
29. Spokane Falls CC
 - a. <https://sfcc.spokane.edu/>
 - b. <https://sfcc.spokane.edu/For-Our-Students/Getting-Help/Career-and-Transfer-Center/Career-Services>
30. Tacoma CC
 - a. <http://www.tacomacc.edu/>
31. Walla Walla CC
 - a. <http://www.wwcc.edu/>
32. Wenatchee Valley College
 - a. <http://www.wvc.edu/>
 - b. <https://www.wvc.edu/students/support/career-services/index.html>
33. Whatcom CC
 - a. <http://www.whatcom.ctc.edu/>
 - b. <http://www.whatcom.ctc.edu/about-the-college/employment-hr>
34. Yakima Valley CC
 - a. <https://www.yvcc.edu/>

Liability Information

L&I Internship Regulations

Unpaid Internships 101

“There are limited circumstances in which unpaid student internships are allowed and exempt from the Minimum Wage Act, Chapter 49.46 RCW and the Industrial Insurance laws, Chapter 51 RCW. The fact sheet describes the criteria and limitations for unpaid internships under the wage and hour as well as the industrial insurance (i.e., workers’ compensation) laws.”

<https://www.lni.wa.gov/workers-rights/wages/minimum-wage/internships-apprenticeships-and-volunteers>

Federal Internship Compliance with Fair Labor Standards Act (FLSA), Test for Unpaid Interns

<http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>

Relevant L&I Policies:

- Hours Worked: <https://lni.wa.gov/workers-rights/wages/overtime/>
- Minimum Wage: <https://www.lni.wa.gov/workers-rights/wages/minimum-wage/>

L& I Resources

- Workers’ compensation 1-800-547-8367
- Workplace safety and health 1-800-423-7233
- Wage and hour questions 1-800-219-7321
- Workplace Injury Claims 1-800-831-5227

***See Appendix A for relevant government literature regarding liability information**

Appendix A

Student Volunteers and Workers' Compensation

Coverage Unpaid Internships 101

Internship Programs Under The Fair Labor Standards

Minimum Hourly Wage

Hours Worked L&I

Student Volunteers and Workers' Compensation Coverage

A new law passed in 2016 expands who is eligible for L&I's medical only coverage.



What's new?

Before the new law, L&I offered medical aid coverage for only public K-12 school student volunteers.

- Beginning June 9, 2016, L&I will offer medical aid-only coverage for qualified student volunteers in private K-12 schools, and in private and public institutions of higher education.
- In an effort to encourage employers to participate in school-sponsored, unpaid work-based learning, the new law enables L&I to provide medical aid-only coverage for unpaid students.

What is a student volunteer? What is an unpaid student?

Definitions of student volunteers and unpaid students:

	Student volunteer	Unpaid student
Enrollment:	Enrolled in a public or private K-12 school or institution of higher education	Enrolled in a public or private institution of higher education, not in a K-12 school
Authorization of program:	Participating as a volunteer under a program authorized by the school	<ul style="list-style-type: none">■ Participating in an unpaid work-based learning program authorized by the school■ Includes students in school-sponsored, unpaid work-based learning, including cooperative education, clinical experiences, and internship programs
Wages/remuneration:	<ul style="list-style-type: none">■ Performing duties for employer without wages■ Student volunteers in K-12 schools may receive credit towards graduation■ May receive maintenance and reimbursement for actual expenses incurred in performing assigned duties (not considered wages)	<ul style="list-style-type: none">■ Performs duties without wages■ Receives credit (not considered wages) toward completing school program, certification, or degree in return for services



Washington State Department of
Labor & Industries
Workers' Compensation Services

Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 360-902-5797. L&I is an equal opportunity employer.

How do I get medical aid coverage for student volunteers and/or unpaid students?

Complete an *Application for Elective Coverage of Excluded Employment* form (F213-112-000). The completed form serves as notice to L&I that you will be providing this coverage. (See WAC 296-17-935 for your reporting options.)

State fund employers:

- Submit the completed application to L&I's Employer Services section at the address printed on the form.
- Call 360-902-4817 or your Account Manager with any questions.

Self-insured employers:

- Submit the completed application to L&I's Self-Insurance section at the address printed on the form.
- Call 360-902-6867 with any questions.

Where do I get the application form?

The *Application for Elective Coverage of Excluded Employment* (F213-112-000) is available online at www.Lni.wa.gov/Forms/WordForms/F213-112-000.docx or by calling the numbers listed above.

What about internships?

Internships mean different things to different people. If you have:

- Paid interns: you must report them in your business' risk classification. Reimbursement for expenses incurred in performing assigned duties is **not** considered a wage.
- Unpaid interns working for credit towards completing a school program, certification, or a degree in return for services: may be unpaid students – each scenario will be reviewed on a case-by-case basis.

What does medical aid coverage mean?

This coverage pays approved medical care costs that pertain to an injury or illness resulting from volunteer activities. Electing this coverage does **not** protect employers from tort liability.

Who pays the L&I premium?

State fund employers who have elected coverage for their student volunteers and/or unpaid students. Schools do not pay the premium unless the student is volunteering for the school.

Self-insured employers do not pay premiums; however, they agree to pay the costs of a qualifying claim filed by a student volunteer and/or unpaid student.

Which law established this volunteer coverage and is now being updated?

In 1994, the Washington State Legislature passed the student volunteers statute, RCW 51.12.170. This RCW was updated in 2016 by Engrossed Substitute Senate Bill 6293. Rules administering the law may be found in Washington Administrative Code (WAC) Chapter 296-17, at <http://app.leg.wa.gov/wac/default.aspx?cite=296-17>.

Unpaid Internships 101



What is an internship?

An internship is work-related learning for individuals who want hands-on experience in an occupation.

Determining whether an intern is an employee under the state Minimum Wage Act

The definition of “employ” is similar under state and federal laws. So, the Washington State Department of Labor & Industries (L&I) looks to the application of the federal Fair Labor Standards Act for guidance when determining whether interns are employees under the Minimum Wage Act. Employees who are covered under the Minimum Wage Act must be provided all its protections, including minimum wage, overtime, and paid sick leave.

Under certain conditions, individuals without an expressed or implied agreement for pay or other compensation may work for their own advantage at a business and not necessarily be an employee. Whether an intern is an employee depends on all the circumstances surrounding the person’s activities on the employer’s premises.

Courts have identified seven factors to determine whether an intern is an employee for wage and hour laws. These factors must be weighed and balanced together in making their determination. The factors are laid out in L&I’s policy addressing hours worked. See L&I’s Administrative Policy ES.C.2 – Hours Worked (No. 7) at www.Lni.wa.gov/workers-rights/_docs/esc2.pdf.

If an employer wishes to offer an internship that is not subject to the Minimum Wage Act, the employer should analyze to what extent:

1. The intern and employer understand that there is no expectation of compensation because any promise of compensation, stated expressly or implied, suggests that the intern is an employee.
2. The internship provides trainings that would be similar to an educational environment.
3. The internship is connected to the intern’s formal education program, such as integrating the job experience with coursework or academic credits.
4. The internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The intern receives beneficial learning throughout the duration of their internship.
6. The intern’s work complements, instead of displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The intern and employer understand the intern is not entitled to a paid job at end of the internship.



Washington State Department of
Labor & Industries

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No single factor answers the question of whether an intern is an employee. Rather, the test examines whether the intern or the employer is the “primary beneficiary” of the relationship. An employer must look at all relevant factors presented by the internship to make that determination. This means that the fewer of the above factors that an employer satisfies the more likely the intern is to be an employee subject to the Minimum Wage Act protections. If a worker is an employee under the Minimum Wage Act then all the protections apply.

Clarifying certain factors and addressing compensation

Determining if an internship provides training that is similar to an “educational environment”

In general, the more an internship is connected with a classroom or academic experience, the more likely the internship will be viewed as an extension of the individual’s educational experience.

For example, this often occurs when a college or university oversees the internship program and provides academic credit. This could include clinical and other hands-on training provided by educational institutions.

An intern may be viewed more as an employee receiving training if the program is:

- Connected solely with the employer’s actual operations.
- Provides skills particular to only one employer’s operation.

Under these circumstances, the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the work of the intern.

For example, if the interns are engaged in the operations of the employer or are performing productive work that benefits the employer (such as filing, performing other clerical work, or assisting customers), then the interns may be employees entitled to wage and hour law protections, even if they also derive other benefits from this type of placement.

Determining if an intern’s work complement other employees — rather than displacing them — while also providing the intern significant educational benefits

The following examples provide guidance about when an intern’s duties might displace other employees:

- If an employer uses interns as substitutes for regular workers or to support its existing workforce during specific time periods; or
- If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then it would be more likely that the

interns are considered employees and entitled to compensation.

An intern’s work must still provide significant educational benefits to the intern, such as teaching the intern tasks or skills that would be useful in other work settings in the future.

Does compensation transform an internship into employment?

Not necessarily. An intern may receive compensation, such as a stipend or reimbursement, for expenses during their internship.

If an employer uses an unpaid internship as a trial period for an individual to obtain a paid job at the end of the internship, it is more likely that the intern will be considered an employee.

Please note: Internships are not the same as on-the-job training, which is generally considered hours worked, and must be paid. See L&I’s Administrative Policy ES.C.2 — Hours Worked for more details at www.Lni.wa.gov/workers-rights/_docs/esc2.pdf. Internships are also not the same as working in a registered apprenticeship, see www.Lni.wa.gov/Apprenticeship.

Interns can participate in job shadowing opportunities, if:

- A regular employee provides close and constant supervision; and,
- No work, or a minimal amount of work, takes place.

In such cases, job shadowing would likely be viewed as a true educational experience for the intern.

High school students in work-based learning programs

Students in a school-to-work program

Students may be placed in a school-to-work program on a paid or unpaid basis. See L&I's Administrative Policy ES.C.2 — Hours Worked (No. 8) for more details at www.Lni.wa.gov/workers-rights/_docs/esc2.pdf. A business must meet all five of the following criteria to relieve it from providing the Minimum Wage Act protections:

1. The training program is certified and monitored by the school district or the Office of the Superintendent of Public Instruction.
2. A training plan exists that establishes a link to the academic work; for example, the training plan could be a detailed outline of the competencies to be demonstrated to achieve specific outcomes and gain specific skills. The worksite effectively becomes an extension of the classroom activity and credit is given to the student as part of the course.
3. The school has a designated district person as an agent/instructor for the worksite activity and monitors the program.
4. The worksite activity involves students observing, work shadowing, or watching demonstrations, with students doing no substantive production or benefit to the business. The business has an investment in the program and actually incurs a burden for the training and supervision of the student offsets any productive work performed by the student. Students may not displace regular workers or cause regular workers to work fewer hours as a result of any functions performed by the student.
5. The student is not entitled to a job at the completion of the learning experience. The parent, student, and business all understand the student is not entitled to wages for the time spent in the learning experience.

If a student under age 18 is placed in a paid position, all requirements of the Minimum Wage Act, the Industrial Welfare Act, and child labor regulations must be met.

Workers' compensation coverage

On the use of volunteers

Volunteers are permitted for non-profit, governmental, charitable or educational organizations.

For-profit businesses don't have volunteers. Instead, they may have:

- Qualified student volunteers in a school-sponsored program (grades K-12 or institutions of higher education)
- Unpaid students participating in a work-based learning program in an institution of higher education, for which the student receives credit (not wages) toward completing a program, certification, or degree in return for services.

For more details about criteria for a qualified student volunteer or unpaid student, go to www.Lni.wa.gov/insurance/insurance-requirements/volunteers/#student-volunteers-and-unpaid-students.

Available workers' compensation coverage for student volunteers or unpaid students

Medical-aid benefits only are available to businesses and organizations using qualifying student volunteers and unpaid students. The elective coverage does not include the other usual benefits of workers' compensation, such as wage replacement, vocational and retraining costs, permanent partial disability payments, or death benefits. The business or organization electing the coverage is not protected from civil liability

For more information, see Student Volunteers and Workers' Compensation Coverage (www.Lni.wa.gov/go/F213-023-000).

To obtain this coverage for student volunteers and unpaid students, complete the Application for Elective Coverage of Excluded Employments at www.Lni.wa.gov/go/F213-112-000.



Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act

This fact sheet provides general information to help determine whether interns and students working for “for-profit” employers are entitled to minimum wages and overtime pay under the Fair Labor Standards Act (FLSA).¹

Background

The FLSA requires “for-profit” employers to pay employees for their work. Interns and students, however, may not be “employees” under the FLSA—in which case the FLSA does not require compensation for their work.

The Test for Unpaid Interns and Students

Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.² In short, this test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts have identified the following seven factors as part of the test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

¹ The FLSA exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for

humanitarian purposes for non-profit food banks. WHD also recognizes an exception for individuals who volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.

² E.g., *Benjamin v. B & H Educ., Inc.*, --- F.3d ---, 2017 WL 6460087, at *4-5 (9th Cir. Dec. 19, 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-12 (11th Cir. 2015); see also *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152-53 (1947); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

Where to Obtain Additional Information

This publication is for general information and is not a regulation. For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: MINIMUM HOURLY WAGE

NUMBER: ES.A.3

CHAPTER: [RCW 49.46.020](#)
[WAC 296-126](#)
[WAC 296-125](#)
[WAC 296-131](#)

REPLACES: ES-008
ISSUED: 1/2/2002
ISSUED: 7/15/2014

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

Minimum Wage Adjustments

The Minimum Wage Act provides that on September 30, 2000 and on each following year on September 30th, the Department of Labor and Industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate will be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States Department of Labor. Each adjusted minimum wage rate takes effect on the following 1st of January.

Each minimum wage adjustment will be published in the Washington State Register.

Minimum Hourly Wage—Adults

Employers must pay each employee who is age 18 or older at least the minimum hourly wage established under [RCW 49.46.020](#). This includes agricultural workers, except as provided in [RCW 49.46.010\(3\)\(a\)](#).

Minimum Hourly Wage—Minors

The department has the authority to set the minimum wage rate for minors by regulation, and did so in [WAC 296-125-043](#), [WAC 296-126-020](#), and [WAC 296-131-117](#), which state that the minimum wage for minors 16- and 17-years of age is equal to that of adults, and the minimum wage for minors under 16 years of age is 85 percent of the applicable adult minimum wage.

Minimum Hourly Wage—Agricultural Labor

Agricultural workers, including minors, are covered under the state minimum wage provisions, except the minimum wage requirement doesn't apply to hand harvest laborers paid piece rate, *and* who commute daily from their permanent residence to the farm *and* who are employed fewer than thirteen weeks in agriculture in the preceding calendar year. See [RCW 49.46.010\(3\)\(a\)](#).

An example of workers within this group might include berry pickers who reside permanently in the area and work only in the berry crop.

The employer has the burden of proving that workers fall within the above exemption.

Determining whether an employee has been paid the minimum wage

In order to determine whether an employee has been paid the statutory minimum hourly wage when the employee is compensated on other than an hourly basis, the following standards should be used:

- If the pay period is weekly, the employee's total weekly earnings are divided by the total weekly hours worked (including hours over 40). Earnings must equal minimum wage for each hour worked. If such earnings do not equal minimum wage, the employer must pay the difference.
- If the regular pay period is not weekly, the employee's total earnings in the pay period are divided by the total number of hours worked in that pay period. The result is the employee's hourly rate of pay. Earnings must equal minimum wage for each hour worked. If such earnings do not equal minimum wage, the employer must pay the difference.
- For employees paid on commission or piecework basis, wholly or in part, other than those employed in bona fide outside sales positions, the commission or piecework earnings earned in each workweek are credited toward the total wage for the pay period. The total wage for that period is determined by dividing the total earnings by the total hours worked; the result must be at least the applicable minimum wage for each hour worked. See [WAC 296-126-021](#).

Meal periods are considered hours worked if the employee is required to remain on duty or on the employer's premises at the employer's direction subject to call. In such cases, the meal period counts toward total number of hours worked and must be included in the minimum wage determination.

- “Total earnings” is meant to include all compensation received for hours worked in the pay period, as well as any additional payments, i.e., split-shift bonus or stand-bypay.
- See [ES.A.8.1](#) and [ES.A.8.2](#) for overtime calculations for payment of other than a single hourly rate.

Payments not Included in minimum wage determination:

- Vacation pay or holiday pay is not considered when computing the minimum wage.
 - Gratuities, tips, or service fees are not considered when computing the minimum wage and may not be credited as part the minimum wage.
See [WAC296-126-022](#)
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ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: HOURS WORKED

NUMBER: ES.C.2

CHAPTERS: [RCW 49.12](#)
[RCW 49.46](#)
[WAC 296-126](#)
[WAC 296-128](#)

ISSUED: 1/2/2002
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REVISED: 11/28/2007
REVISED: 9/2/2008
REVISED: 7/19/2021

SEE ALSO: [ES.A.1](#), [ES.A.3](#),
[ES.A.8.1](#), [ES.B.1](#), [ES.C.1](#),
and [ES.C.6.2](#)

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1. What are “hours worked”?

“Hours worked,” means all hours during which the employee is authorized or required, known or reasonably believed by the employer to be on duty on the employer’s premises or at a prescribed work place. See [WAC 296-126-002\(8\)](#); [WAC 296-128-600\(9\)](#); see also Administrative Policy [ES.C.1](#). An analysis of “hours worked” must be determined on a case-by-case basis, depending on the facts.

The definition of “hours worked” is satisfied if all three of these elements are met:

- 1- *An employee is authorized or required by the employer:* Is the time spent by the employee requested, suffered, permitted, allowed, or otherwise sanctioned by the employer for the employee to complete work on the employer’s behalf?
- 2- *To be on duty:* Does the employer restrict the employee’s personal activities and/or control the employee’s time?
- 3- *On the employer’s premises or at a prescribed workplace:* Is the employee on an employer’s worksite or otherwise at a location where work is performed for the employer?

If all three elements are satisfied then the time is considered hours worked under state law. Under certain circumstances, it may be difficult to determine if all factors apply. The remaining sections of this policy illustrate the application of these factors in a variety of situations.

2. When is time “hours worked” and what are an employer’s responsibilities to compensate its employees for “hours worked”?

Employers must pay employees for all “hours worked.” “Hours worked” means all work requested, suffered, permitted, or allowed while on duty on the employer’s premises or at a prescribed workplace, and includes travel time, training and meeting time, wait time, on-call time, preparatory and concluding time, and may include meal periods. “Hours worked” includes all time worked regardless of whether it is a full hour or less. “Hours worked” includes, for example, a situation where an employee may voluntarily continue to work at the end of the shift. The employee may desire to finish an assigned task or may wish to correct errors, prepare time reports or other records. The reason or pay basis is immaterial. If the employer knows or has reason to believe that the employee is continuing to work, such time is compensable working time.

An employer may not avoid or negate payment of regular or overtime wages by issuing a rule or policy that such time will not be paid or must be approved in advance. However, an employer may have a policy requiring prior approval and may discipline an employee for working overtime without prior approval so long as the discipline does not include not paying the worker for the overtime performed. If the work is performed, it must be paid. It is the employer’s responsibility to ensure that employees do not perform work that the employer does not want performed.

When time is “hours worked,” the employer must comply with the applicable compensation required by state and local wage laws for that time. The Minimum Wage Act requires employers to pay employees at least the minimum wage for all hours worked. [RCW 49.46.020](#). Employers may also be responsible for a higher hourly wage rate provided by agreement or under a local ordinance and must pay overtime rates to eligible employees for any “hours worked” in excess of 40 hours in a workweek. [RCW 49.52.050](#); [RCW 49.46.130](#). In addition to wages, all covered employees must accrue paid sick leave on all hours worked at a rate of at least one hour of paid sick leave for every forty hours worked. [RCW 49.46.020\(4\)](#); [RCW 49.46.210\(1\)\(a\)](#); [WAC 296-128-620\(1\)](#). For information about how non-agricultural commission or piece-rate workers are treated under the law, see Administrative Policy [ES.A.3](#), “Minimum Hourly Wage.” For information about how agricultural commission or piece-rate workers are treated under the law, see Administrative Policy [ES.C.6.2](#), “Agricultural Labor Standards.”

3. What is travel time and when is it considered “hours worked”?

Travel time is time spent by an employee travelling for a work-related purpose. Whether time spent travelling for work constitutes paid work time depends on whether the travel time is considered “hours worked.” If the travel or commute time is considered “hours worked” under [RCW 49.46.020](#) and [WAC 296-126-002\(8\)](#), then it is compensable and the employee must be paid for this time. These statutory and regulatory requirements cannot be waived through a collective bargaining agreement or other agreement.

The same general definition of hours worked described in Section 1 above applies to travel time. See [WAC 296-126-002\(8\)](#) (“Hours worked” means all hours when an employee is authorized or required by the employer to be on duty on the employer’s premises or at a prescribed workplace). This means that when evaluating whether travel time is compensable, each element of the “hours worked” definition must be evaluated.

To reiterate, the three elements in the definition of “hours worked” are:

- 1- An employee is authorized or required by the employer,
- 2- To be on duty,
- 3- On the employer’s premises or at a prescribed workplace.

If any of the three elements is not satisfied, then the time spent travelling is not considered “hours worked.” Ordinary commute time does not typically satisfy the conditions to be considered hours worked, but there are exceptions. Please see Section 4 of this policy for further guidance.

4. When is travel time in a company-provided vehicle considered hours worked?

Whether time spent driving or riding in a company-provided vehicle constitutes paid work time depends on whether the time is considered “hours worked” under the three-part analysis described above.

Time spent driving or riding in a company-provided vehicle during an employee’s ordinary commute, from home to the first job site of the day, or from the last job site of the day to home, is not considered hours worked if the employee is not on duty and performs no work while driving or riding in the company-provided vehicle.

Time spent driving a company-provided vehicle from the employer’s place of business to the job site is considered hours worked. Time spent riding in a company-provided vehicle from the employer’s place of business to the job site is not considered hours worked when an employee voluntarily reports to the employer’s location merely to obtain a ride as a passenger for the employee’s convenience, is not on duty, and performs no work. Time spent driving or riding as a passenger from job site to job site is considered hours worked.

Note: A similar analysis applies when determining whether travel time in a personal vehicle is considered hours worked. A personal vehicle may also be an employer’s premises or a prescribed workplace and all relevant facts must be considered when making a determination. However, the time spent in a personal vehicle is less likely to be considered to be the employer’s premises or a prescribed workplace as compared to the circumstances when an employee uses a company-provided vehicle.

Factors to consider in determining if an employee is “on duty” when driving a company-provided vehicle between home and work.

To determine if the employee is on duty, the extent to which the employer restricts the employee’s personal activities and controls the employee’s time must be evaluated. This includes an analysis of the frequency and extent of such restrictions and control. The following is a non-exclusive list of factors to consider when making a determination if an employee is “on duty.” All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

1. The extent to which the employee is free to make personal stops and engage in personal activities during the drive time between home and the first or last job site of the day, or whether the vehicle may only be used for company business.
2. The extent to which the employee is required to respond to work-related calls or to be redirected while en route.
3. Whether the employee is required to maintain contact with the employer.
4. The extent to which the employee receives assignments at home and must spend time writing down the assignments and mapping the route to reach the first job site before beginning the drive.

Factors to consider in determining if an employee is “on the employer’s premises or at a prescribed work place” when driving a company-provided vehicle between home and work.

To determine if a company-provided vehicle constitutes a “prescribed work place,” an employer must evaluate whether driving the particular vehicle is an integral part of the work performed by the employee. The following is a non-exclusive list of factors to consider when making a determination if an employee is “on the employer’s premises or at a prescribed work place.” All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

1. Whether the nature of the business requires the employee to drive a particular vehicle provided by the employer to carry necessary non-personal tools and equipment to the work site.
2. The extent to which the company-provided vehicle serves as a location where the employer authorizes or requires the employee to complete business-required paperwork or load materials or equipment.
3. The extent to which the employer requires the employee to ensure that the vehicle is kept clean, organized, safe, and serviced.

The following are two examples of how this policy may be used to determine whether or not drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. These examples are illustrative and are not intended to create additional factors or address other scenarios where the facts differ from those below.

EXAMPLE 4-1: The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- As a matter of accepted company practice, the employee is prohibited from any personal use of the vehicle, which must be used exclusively for business purposes; and
- The employer regularly requires the employee to perform services for the employer during the drive time, including being redirected to a different location; and

- The employee regularly transports necessary non-personal tools and equipment in the vehicle between home and the first or last job site of the day; and
- The employee receives daily job site assignments at home in a manner that requires the employee to spend more than a negligible amount of time writing down the assignments and mapping travel routes for driving to the locations.

Here, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is compensable.

EXAMPLE 4-2: The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- The employer does not strictly control the employee's ability to use the vehicle for personal purposes. The employee, as a matter of accepted company practice, is able to use the vehicle for personal stops or errands while driving between home and the job site; and
- The employee is not required to perform any services for the employer during the drive, including responding to work-related calls or redirection; and
- The employee does not perform any services for the employer during the drive, including work-related calls or redirection.

Here, the drive time between home and the first or last job site of the day in a company-provided vehicle is not compensable.

5. When is out-of-town travel "hours worked"?

For out-of-town travel, Washington law is more favorable than federal law. Federal law excludes certain travel time under the Portal to Portal Act and federal regulations. See 29 U.S.C. § 254; 29 C.F.R. § 785. The Washington Minimum Wage Act does not include such provisions. See *Anderson v. Dep't of Social & Health Servs.*, 115 Wn. App. 452, 457, 63 P.3d 134 (2003). In Washington, all travel time related to work is compensable regardless of the number of hours or when the travel takes place. It also includes any time necessary to get to an airport, train station, or other transit center necessary to complete the out-of-town travel. For information on federal travel time requirements, contact the U.S. Department of Labor at their toll free # 1-866-487-9243 or on their [website](#).

Compensable out-of-town travel takes place for the employer's benefit and is requested to meet the needs of a particular assignment. Such travel time is an integral part of the principal activity that the employee was hired to perform (i.e. it is an integral component of the work assignment or job task). This is true regardless of whether the employee engages in additional work during the journey or whether the employer owns or controls the employee's means of transport. Because the travel itself is a duty of the work assignment, so long as the employer approves the means of travel, the employee is authorized to be on duty at a prescribed workplace throughout the active travel time and therefore the time meets all three elements of the hours worked rule. See [WAC 296-126-002](#).

Once an employee arrives at the employee's lodgings, the employee is no longer "on duty" and that time is not compensable as "hours worked" so long as the worker is free to engage in personal activities.

EXAMPLE 5-1: An employee is required to travel to a training seminar in distant city. The employee leaves for the training directly from the employee's home and goes to the airport and parks there. The employee flies directly to the training city, picks up a rental car, and drives the rental car directly to the hotel. When the employee arrives at the hotel, the employee is free to leave the hotel to go on a walk or otherwise engage in personal activities while staying at the hotel. The employee attends all the required sections of the training seminars daily, but is free each evening to engage in personal activities. The employee performs no work outside of the required training. After the employee completes the training, the employee drives directly home after driving the rental car back to airport, catching a flight home, and picking up the employee's car at a long-term parking lot.

What time is compensable in this scenario?

- The time from when the employee leaves home until the employee arrives at the hotel in the other city is compensable time. This time is compensable because the travel is a duty of the work assignment, so long as the employer approves the means of travel, the employee is authorized to be on duty at a prescribed workplace throughout the active travel time and therefore the time meets all three elements of the hours worked rule.
- Once the employee arrives at the employee's lodgings and is free to engage in personal activities, the employee is no longer "on duty" and that time is not compensable as "hours worked." While any free time the employee engages in once the employee has arrived at the hotel is not compensable, any time in the training itself is compensable, except for certain training as described in section 6. Free time at the hotel is not compensable because the employee is no longer "on duty" and that time is not compensable as "hours worked" so long as the worker is free to engage in personal activities.
- When the employee returns home, the time from when the employee leaves the hotel (or training facility) in the remote city, until the employee arrives home, is also compensable. This time is compensable because the travel is a duty of the work assignment, so long as the employer approves the means of travel, the employee is authorized to be on duty at a prescribed workplace throughout the active travel time and therefore the time meets all three elements of the hours worked rule.

EXAMPLE 5-2: An employee is required to travel to a nearby city for an annual training presented by the employer to a state-wide group of employees. The employee is required to report to work to pick up a work vehicle before traveling out of town. When the employee arrives at the hotel, the employee is free to leave the hotel to go on a walk or otherwise engage in personal activities while at the lodging. During the evenings, the employee spends several hours catching up on work emails. The employee attends all the required sections of the training seminars. After the employee completes the training, the employee returns to the office to drop-off the employer's vehicle and then drives home using a personal vehicle.

What time is compensable in this scenario?

- The drive between work and home at the beginning and end of the travel is considered normal commute time and is not compensable. This time is not compensable because the employee was required to report to work before travelling out of town.
- The time spent on the journey to the other city after employee leaves their work until the employee arrives at their hotel in the other city is compensable. Likewise, the time spent traveling back to the office from the training site is compensable. This time is compensable because the travel is a duty of the work assignment, so long as the employer approves the means of travel, the employee is authorized to be on duty at a prescribed workplace throughout the active travel time and therefore the time meets all three elements of the hours worked rule.
- Any free time the employee engages in once the employee has arrived at the hotel is not compensable, but any time in the training itself is compensable, except for certain training as described in section 6. Free time at the hotel is not compensable because the employee is no longer “on duty” and that time is not compensable as “hours worked” so long as the worker is free to engage in personal activities.
- The time spent checking emails in the evenings is compensable time. This time is compensable because the employee is performing work.

EXAMPLE 5-3: An employee voluntarily travels out-of-town to another city for non-work related purposes. While in the other city, the employee visits a satellite office maintained by the employer in the city to perform some remote work because it easier to do so, but the employee is free to perform the work off-site.

What time is compensable in this scenario?

- Since the employee’s travel in this situation was for non-work purposes, the travel was not performed for the employer’s benefit. Therefore, the travel time to and from the other city is not compensable.
- The time spent traveling from the employee’s lodgings to the work-site is not compensable, because the employee chose to perform work while on a personal trip by going to an employer’s satellite office. This travel time is equivalent to normal commute time. So, only the time the employee spent actually working on-site at the satellite office is compensable.

6. What constitutes training and meeting time and when is it considered “hours worked”?

Training and meeting time means all time spent by employees attending lectures, meetings, training periods, and similar activities required by the employer. Time spent by an employee during such training and meeting time is considered hours worked.

Time spent by employees in these activities need *not* be counted as hours worked if all of the following tests are met:

6.1 Attendance is voluntary; and

6.2 The employee performs no productive work during the meeting or lecture; and

6.3 The meeting takes place outside of regular working hours; and

6.4 The meeting or lecture is not directly related to the employee's current work, as distinguished from teaching the employee another job or a new, or additional, skill outside of skills necessary to perform job.

The factors for training time above follow from the three elements of the definition of “hours worked.” If all of the conditions above are not met, then the employee is “authorized or required to be on duty at the employer’s premises or prescribed workplace” because the employer is controlling the employee’s time, or the employee is otherwise on-duty because the employee is performing productive work. On the other hand, when training attendance is voluntary, the employee performs no productive work, the training takes place outside of regular working hours, and the training is unrelated to the employee’s current work, then the employee is not authorized or required to be on duty by the employer.

If an employer requires an employee to participate, or otherwise leads the employee to believe that the present working conditions, or the continuance of the employee’s employment, may be adversely impacted by non-attendance, the time spent will be considered hours worked. The employer in these circumstances is controlling the employee’s time and must pay for it.

When a public entity, rather than an employer, requires the training, then an abbreviated version of the test above applies. Time spent in training programs mandated by federal, state, or local regulation, but *not* by the employer, need not be paid if the first three provisions are met; that is, if attendance is voluntary, the employee performs no productive work during the training time, and the training takes place outside of normal working hours.

When federal, state, or local laws require a certificate or license of the employee for the position held, time spent in training to obtain the certificate or license, or certain continuous education requirements, are not considered hours worked.

EXAMPLE 6-1: State regulations may require that certain employees successfully complete a course in Cardio-Pulmonary Resuscitation (CPR). The state regulations may require that in order to be employed in such a position the employee must be registered with the state or have successfully completed a written examination, approved by the state, and further fulfilled certain continuous education requirements.

What time is compensable in this scenario?

- If the employee seeks and obtains this training outside of regular working hours and performs no productive work during the training, the time spent in training is not considered hours worked.
- If the employer requires all employees to attend a specific training to satisfy regulatory requirements, all employees attending the training must be paid for the hours spent in the training course.

- If the employee completes the training during work hours, the time spent in training is considered hours worked.

7. What determines an employment relationship with interns?

The federal courts and federal Department of Labor have used the “primary beneficiary test” to determine whether an intern is, in fact, an employee under the federal Fair Labor Standards Act (FLSA). *E.g.*, *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528 (2nd Cir. 2016); *Benjamin v. B & H Educ., Inc.*, 877 F.3d 1139 (9th Cir. 2017). As the state and federal definition of “employ” are identical, the department looks to federal case law and guidance for whether interns are also exempt from Washington’s Minimum Wage Act. Under certain conditions, persons without any expressed or implied compensation agreement may work for their own advantage on the premises of another and are not necessarily employees. Whether interns are employees depends upon all of the circumstances surrounding their activities on the premises of the employer. Courts have identified the following seven factors when evaluating whether an intern is, in fact, an employee.

7.1 The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.

7.2 The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including clinical and other hands-on training provided by educational institutions.

7.3 The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.

7.4 The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.

7.5 The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.

7.6 The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

7.7 The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

No single factor above is determinative. Rather, the test examines who is the “primary beneficiary” of the relationship between an intern or trainee and the employer. All relevant factors must be considered together to make a determination on the intern or trainee status of an individual. If analysis of these circumstances shows that the intern or trainee is an employee, then the employee is entitled to all the protections of the Minimum Wage Act. Likewise, if the intern or trainee is not an employee then none of the Minimum Wage Act protections apply.

8. What constitutes paid or unpaid work for students in a school-to-work program?

Students may be placed in a school-to-work program on a paid or unpaid basis. The department will not require payment of minimum wage, provided all of the following criteria are met. If all five requirements are not met, the business will not be relieved of its obligation to pay minimum wage, or provide paid sick leave, as required by the Minimum Wage Act.

8.1 The training program is a bona fide program certified and monitored by the school district or the Office of the Superintendent of Public Instruction; and

8.2 A training plan exists that establishes a link to the academic work, e.g., a detailed outline of the competencies to be demonstrated to achieve specific outcomes and gain specific skills. The worksite effectively becomes an extension of the classroom activity and credit is given to the student as part of the course; and

8.3 The school has a designated district person as an agent/instructor for the worksite activity and monitors the program; and

8.4 The worksite activity is observational, work shadowing, or demonstrational, with no substantive production or benefit to the business. The business has an investment in the program and actually incurs a burden for the training and supervision of the student that offsets any productive work performed by the student. Students may not displace regular workers or cause regular workers to work fewer hours as a result of any functions performed by the student, and

8.5 The student is not entitled to a job at the completion of the learning experience. The parent, student, and business all understand the student is not entitled to wages for the time spent in the learning experience.

If a minor student is placed in a paid position, all requirements of the Minimum Wage Act, the Industrial Welfare Act, and minor work regulations must be met. Minor students placed in a paid position with public agencies are subject to the Industrial Welfare Act.

Public agencies are not subject to the state minor work regulations, but they are subject to payment of the applicable state minimum wage.

Note: Public agencies employing persons under age 18 are subject to the federal child labor regulations and should contact the United States Department of Labor for specific information on hours and prohibited occupations.

9. What constitutes “on-call” time and when is it considered “hours worked”?

Whether or not employees are “working” during on-call time depends upon whether they are required to remain on or so close to the employer’s premises that they cannot use the time effectively for their own purposes.

Employees who are not required to remain on the employer’s premises but are merely required to leave word with their supervisors where they may be reached are not working while on-call. If the employer places restrictions on where and when the employee may travel while “on call” this may change the character of that “on call” status to being engaged in the performance of active duty. The particular facts must be evaluated on a case-by-case basis.

Employees may also be required to be on-call during paid rest breaks under certain circumstances. If the employee is called to duty, the rest period transforms the on-call period to an intermittent rest period and the employee must receive the remainder of their 10-minute break during the same four-hour work period. The time spent on-call during a rest period is considered “hours worked” regardless of whether the employee is called to duty or not. See Section 13 below; Administrative Policy [ES.C.6.1](#).

10. What constitutes “waiting time” and when is it considered “hours worked”?

In certain circumstances employees report for work but due to lack of customers or production, the employer may require them to wait on the premises until there is sufficient work to be performed. “Waiting time” is all time that employees are required or authorized to report at a designated time, and to remain on the premises or at a designated work site until they may begin their shift. During this time, the employees are considered to be engaged to wait, and all hours will be considered hours worked.

When a shutdown or other work stoppage occurs due to technical problems, such time spent waiting to return to work will be considered hours worked *unless* the employees are completely relieved from duty and can use the time effectively for their own purposes. For example, if employees are told in advance they may leave the job and do not have to commence work until a certain specified time, such time will not be considered hours worked. If the employees are told they must “stand by” until work commences, such time must be paid.

EXAMPLE 10-1: A truck driver is tasked with making freight deliveries to the employer’s warehouse. After the driver arrives with the load, the driver must wait for warehouse staff to unload the delivered goods.

- If the driver must standby and wait near the truck for an indeterminate period of time for the truck’s unloading to finish, the driver is likely “engaged to wait” and the time spent waiting would therefore be hours worked.
- If the driver is instead advised that the truck will be unloaded by a specific time, and the driver is fully relieved of all duties during this time and permitted to effectively use the time for employee’s own purposes, then the driver is likely “waiting to be engaged” and the time would therefore not be hours worked.

EXAMPLE 10-2: A customer service representative works remotely from home and depends on access to the employer’s network applications in order to perform work. When the employer’s

network applications experience technical difficulties, the employee is expected to standby until the employer either reestablishes the network applications or dismisses the employee for the day.

The time the customer service representative spends waiting is considered hours worked because the downtime period is of indeterminate duration, the employee is not relieved from duty, and the employee is not able to effectively use this time for the employee's own purposes.

11. Is there a requirement for “show-up” pay?

Under state law, an employer is not required by law to give advance notice to change an employee's shift or the shift's duration, so there is no legal requirement for show-up pay. That is, when employees report to work for their regularly scheduled shift but the employer has no work to be performed, and the employees are released to leave the employer's premises or designated work site, the employer is not required to pay wages if no work has been performed. Local jurisdictions, such as the [City of Seattle](#), may have other employee protections or requirements related to scheduling changes, show-up pay, or related topics.

12. Is paid leave taken to cover an absence under state paid sick leave laws, or other leave provided by an employer, “hours worked”?

No. Hours when an employee uses paid sick leave, or other leave provided by an employer, are not considered hours worked. Accordingly, an employer is not required to count those hours towards paid sick leave accrual requirements or overtime eligibility requirements under state law. See [WAC 296-128-620](#); Administrative Policy [ES.B.1](#); Administrative Policy [ES.A.8.1](#).

13. Are rest periods considered “hours worked”?

Yes, rest periods are considered hours worked and must be compensated because they are “on an employer's time.” See [WAC 296-126-092](#); Administrative Policy [ES.C.6.1](#); *Washington State Nurses Ass'n v. Sacred Heart Medical Center*, 175 Wn.2d 822, 287 P.3d 516 (2012).

14. Are meal periods considered “hours worked”?

Meal periods are considered hours of work when the employer requires employees to remain on duty on the premises or at a prescribed work site and requires the employee to act in the interest of the employer. In such cases, the meal period time counts toward the total number of hours worked and is compensable. See Administrative Policy [ES.C.6.1](#) for more guidance on when meal periods must be paid.

15. What constitutes preparatory and concluding activities and when is this time considered “hours worked”?

Preparatory and concluding activities are those activities that are considered integral or necessary to the performance of the job. Those duties performed in readiness and/or completion of the job are hours worked. When an employee does not have control over when and where such activities may be performed, such activities are hours worked.

Examples of preparatory and concluding activities that are hours worked include:

15.1 Employees in a chemical plant who cannot perform their principal activities without putting on certain clothes, or changing clothes, on the employer's

premises at the beginning and end of the workday. Changing clothes would be an integral part of the employee's principal activity.

15.2 Counting money in the till (cash register) before and after the shift, and other related paperwork.

15.3 Preparation of equipment for the day's operation, i.e., greasing, fueling, warming up vehicles; cleaning vehicles or equipment; loading, and similar activities.

15.4 Time spent participating in mandatory security or health screenings at entry or exit of a work facility.

- An electronic reader board outside of a business that reads,

Help Wanted - Server. Food Handler's Certification Needed.

Offering: \$24.00-\$26.00 per hour, medical benefits, 70 vacation hours per year, and \$500 sign-on bonus.

What is not a posting

Recruiting methods not covered by these changes in the law include any job solicitation that does not include qualifications, a specific available position, or is not available via electronic or printed hard copy.



Examples include:

- A simple "Help Wanted" sign that does not mention a specific position or necessary qualifications.
- Verbal conversations about open or upcoming positions — not available by electronic or printed hard copy.
- An email sent to all employees informing them of an open job opportunity, not listing the necessary qualifications.

Additional resources

- RCW 49.58.110: <https://app.leg.wa.gov/RCW/default.aspx?cite=49.58.110>
- Equal Pay and Opportunities Act: www.Lni.wa.gov/EqualPay
- L&I Administrative Policy ES.E.1: www.Lni.wa.gov/workers-rights/_docs/ese1.pdf

Questions?

Contact L&I's Employment Standards program at 1-866-219-7321 or esgeneral@Lni.wa.gov.

Job posting requirements

RCW 49.58.110



Updates to Equal Pay and Opportunities Act

Beginning Jan. 1, 2023, Engrossed Substitute Senate Bill (ESSB) 5761, passed in 2022, amends RCW 49.58.110 to require employers to include certain information in job postings. This applies to employers with 15 or more employees.

New requirements

An employer must include in a job posting:

- Wage scale or salary range
- General description of all benefits
- General description of other compensation

Note: Employers can use a hyperlink to a more detailed description, as long as a general description is included in the job posting itself.

This section applies to:

- Washington based employees and applicants
- Employers engaging in business in Washington
- Employees who have been offered an internal transfer or promotion

What is a job posting?

A posting is any solicitation* intended to recruit job applicants that includes each of the following:

- Electronic or printed hard copy
- Qualifications for desired applicants
- Specific available position

* This includes recruitments done directly by an employer or indirectly by a third party.

Examples of job postings

These are examples of job postings that would meet the new requirements:

■ An email to internal applicants that reads,

New Message

To

Cc Bcc




Subject



If you are a current employee with a bachelor's degree in computer science, please apply to be an IT Supervisor today!

\$150,000-\$170,000 total per year for salary.


Offering medical benefits and bonuses.

Send








■ A social media post that reads,




Username


Just now · 🌐


Seeking applicants for a Billing Specialist position. Must have 2 years of medical bill processing experience. \$30.00- \$40.00 per hour, medical, vision, and dental benefits, 401k retirement plan, and stock options available. More information can be found via hyperlink.





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