



THE UNIVERSITY OF ARIZONA

James E. Rogers College of Law

Career Development Office

Externship Program

MANUAL FOR EXTERN SUPERVISORS

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RESPONSIBILITIES OF A FIELD SUPERVISOR

Under recent changes to ABA Standard 304, which governs law students' field placement experiences at ABA accredited law schools, students earning credit for work outside of school must be provided with a

[s]ubstantial lawyering experience that

(1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise” and

(2) includes, among other requirements:

(i) direct supervision of the student’s performance by a...site supervisor;

(ii) opportunities for performance, feedback from either a...or site supervisor, and self-evaluation;

(iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both

A. the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and

B. the respective roles of faculty and any site supervisor in supervising the students and in assuring the educational quality of the experience for the students, including a clearly articulated method of evaluations the students’ academic performance...¹

Thus, a field supervisor should provide externs with the experience of an entry-level attorney at the office and provide adequate supervision, feedback and self-evaluation. While achieving these goals, **the main obligations to the law school are:**

1. At the start of the semester, the field supervisor will complete a “Learning Contract” with the student and the student’s faculty supervisor setting forth the expectations and requirements at the placement.
2. The field supervisor will be expected to communicate with the faculty supervisor throughout the semester about the extern’s experience.
3. Allow the Faculty Supervisor to visit the placement for a “site visit” wherein the student’s progress will be discussed, and
4. Provide a final evaluation to the College of Law after the externship hours have been completed.

¹ For complete language of ABA Standard 304, see Attachment. Below we have provided guidance on how site supervisors can ensure that these requirements are fulfilled and that the experience meets expectations for both students and field placements.

STRUCTURING THE EXTERN'S EXPERIENCE

Be prepared: Before the student's arrival, think about the projects you will assign the student and who would be best to supervise those projects. Many students arrive to find that they are without an assigned desk or workspace, a computer, password access, telephone access, office keys or entry codes, for a substantial period of time. All of this should be prepared before the student's arrival so the student can begin work right away.

Ensure attorney supervision: Students must have attorney or an individual otherwise qualified to supervise who are directly providing supervision and feedback. Although the student may work with non-lawyers for discrete aspects of the externship, an attorney or other qualified person must supervise the student's legal work. Supervisors must work on site in the same location as the student.

Assign a primary supervisor: Determine for whom the student will be completing assignments. If the student has more than one supervisor, assign a supervisor who has ultimate responsibility for coordinating the student's work. This includes ensuring that the student does not have too much or too little work and that the student has a variety of assignments. If the supervisor is telecommuting or is out of the office on a day the student is scheduled to work, assign an alternative supervisor.

Schedule an orientation: Before the student arrives, schedule an orientation to acquaint the student with the office and other staff members. During the orientation, brief the student about the office protocols regarding such things as attendance, punctuality, security, safety emergency procedures, filing systems, routing phone calls, dress code, computer usage, and use of research databases such as Lexis/Nexis and Westlaw. (See the attached "Orientation Checklist" for guidance)

Assign only substantive legal matters: Students are required to be engaged in substantive legal work in order to receive academic credit for their externships. Although there are times, in an effort to meet a deadline, prepare for trial, etc. that everyone pitches in to assist with administrative matters, administrative work should NOT be part of the student's regularly scheduled duties. For example, students should not answer phones, photocopy, update databases, or schedule events on a regular basis. Students should never be assigned personal errands. Providing referrals to other agencies may provide some useful experience but should be a limited portion of the student's work.

Goals meeting: Within the first week, meet with the student to discuss the student's educational goals for the semester and your goals regarding work product to be completed. To the extent possible, the work that students receive should promote the stated goals. Students are also likely to have some personal goals that they may be hesitant to articulate that you may want to ask about, and to help coordinate. For example, consider asking your student if he or she is interested in producing a writing sample, networking with other attorneys in the field and/or discussing career strategies.

Set up scheduled meetings: It is important that you meet regularly with students individually to check in, review completed work, address any problems and discuss future assignments. Meetings should cover both substantive work and professional development when applicable. Scheduled meetings should take place a minimum of once a week.

Keep the lines of communication open: Many externs may be reluctant to ask questions or seek advice for fear of appearing incompetent. When you make every effort to create and maintain a comfortable and effective working relationship, the externs' educational experiences and their contributions to your office will be maximized. Create opportunities to observe legal practice. One of the most important aspects of a legal externship is the opportunity to observe attorneys engaged in the practice of law. Avoid having

students spend large amounts of time in relative isolation in the library or other location. Students should be given every opportunity to meet with attorneys and to observe them in action by attending meetings, hearings and trials, settlement conferences, client interviews and preparation, appellate arguments, CLE events, and any other substantive activities involving the attorneys working in the office. In addition, students should be allowed to see the application of their work to the final product. Ensure that students are included on the lists of those receiving office memoranda.

ASSIGNMENTS

Provide clarity in assignments: One of the best ways to ensure that students provide you with the product you want is to make sure that you have given them enough information at the commencement of the project. To maximize clarity, assignments should provide an adequate description of the work required, including the desired form for the finished product; provide a sufficient factual and contextual background; clearly explain the purpose or objectives of the assignment; provide a realistic timeframe for completion, which accounts for a student's level of experience; suggest available reference materials; and indicate whom the student should consult regarding questions along the way and how that person should be contacted.

Assign only substantive projects: Students are required to be engaged in substantive legal, legislative, and law policy work commensurate with an entry level attorney.

FEEDBACK

Our students want feedback: You may be reluctant to critique an extern's work but externs need, deserve, and actually want honest feedback. Without feedback, externs often assume that "no news is good news," and will continue to repeat the same errors unless they are given specific suggestions regarding how to improve. Lead with the positive – the goal is to highlight a particular success (be it a paragraph or an aspect of a presentation) so that it can be reinforced and replicated. Recognition of something that was well done can be a powerful motivator. Provide a limited number of suggestions for improvement at any given time.

Provide feedback early in the process: Externs should receive timely feedback from the assigning attorney on every completed assignment soon after the assignment is completed. If too much time passes, externs are likely to repeat mistakes.

Adhere to a schedule: In addition to informal discussions, regularly scheduled weekly supervision meetings often facilitate ongoing feedback.

Show your work: Occasionally, walk the student through your editing process so the student understands exactly what was changed and why. Check for understanding by posing a question or comment that allows the extern to show he/she can incorporate the suggestions going forward. At the conclusion of assignments, give the student a copy of the edited and/or final product.

Listen to the student: Externs are encouraged to engage with you in a collaborative supervision mode, not a passive one. We suggest that you encourage externs to assess their own work, reflect on their experiences, identify and discuss what they found challenging, and suggest their ideas as to how the work could be improved.

Externs should receive timely feedback on *every completed assignment* from the assigning attorney or judge. One supervision model suggests that supervision should be FAST:

FAST:

Frequent – weekly meetings work well to assure the frequency of feedback

Accurate – describe actions or behaviors that can be addressed, not the person

Specific – pinpoint discrete identifiable points to be replicated or improved upon

Timely – if too much time passes, externs are likely to repeat their mistakes

You may be reluctant to critique an extern’s work, but externs need, deserve, and actually *want* honest feedback. Without feedback, externs often assume that "no news is good news," and will continue to repeat the same errors unless they are given specific suggestions regarding how to improve.

We suggest that you encourage externs to assess their own work, to identify and discuss what they found challenging, and to suggest their ideas as to how the work could be improved. Don’t underestimate the power of self-critique.

THE STUDENT’S WORK SCHEDULE

Although students generally treat their externship work with a high level of responsibility, some students exhibit a certain casualness in regard to work schedules. An essential element of the externship experience is establishing a sense of responsibility and commitment. To this end, students must have a regular schedule so that everyone knows when the student will be at work. As a supervising attorney who must plan assignments and still get your own work done, you are entitled to know when the student will be at your office. A set schedule also gives the student an opportunity to develop a sense of commitment and to view his work as a regular part of the office’s functioning.

We ask you to be firm with students about their work schedule. Let the student know that tardiness or absences are unacceptable in the professional world. If a student is tardy or absent more than once, please discuss this with the student. If this behavior continues, report it to the Director of Externships so that we can talk with the student.

ISSUES

In the vast majority of cases, internships proceed smoothly, with both students and supervising attorneys reaping the benefits of the mentor/student relationship. However, there are occasional surprises. We ask that you contact us should any problems arise during the course of the externship which might require our input. Examples of such issues might be the student’s failure to appear timely, the student’s inability to accomplish tasks assigned, or an uncomfortable relationship between the extern and yourself or other members of the office. When students raise such issues, we ask that they first contact you in order to discuss them. We will intervene only where the student is unable to discuss them, for one reason or another, or where such discussion proves fruitless. Similarly, should you perceive any problems, we ask that you raise them with the student first. If they are not immediately rectified, we ask that you inform us as soon as possible. If they are issues relating to the students irresponsibility toward their internship or ethical issues, we ask that you contact us right away in addition to discussing them with the student.

CONFIDENTIALITY AND OTHER ETHICAL OBLIGATIONS

Law students may not have completed formal training in professional responsibility at the time they commence their externships. For that reason, supervisors should inform students of the placements' specific policies concerning confidentiality. We also encourage you to assist your extern to identify and navigate ethical issues that may arise during the student's fieldwork, such as protecting client confidences, upholding the duty of candor to third parties and tribunals, zealous advocacy, and avoiding conflicts of interest.

WHAT TO EXPECT FROM LAW SCHOOL FACULTY:

Classroom Component: Students may attend a weekly or bi-weekly classroom component. The classes will touch on topics including client confidentiality, professionalism, legal writing, client interviewing, and making the most of the externship experience. Students are required to submit weekly journals and engage in continuous contemporaneous reflection.

Communication: The Director of Externships and staff at the law school are here to support you. At the outset, the faculty supervisor should be communicating with you about our goals and expectations for the student's experience. The Director of Externships and faculty supervisors are mindful of your need for confidentiality. The faculty supervisor will be communicating with you on a regular basis about the status of the externship. The Director of Externships will also be communicating with you about assessing the student's performance and improving the overall experience for both current and future students.

Site Visit: At some point during the semester, the faculty supervisor will conduct a "site visit" wherein she will visit the placement site and discuss the student's performance. The purpose of a site visit is to maintain open communication between the placement and the school and to model collaboration for the externs. We are eager to support you and are grateful for your work with our students; please do not hesitate to call upon us for assistance.

Reflection: Throughout the semester, the Faculty Supervisor will be discussing the student's experience in detail and requiring the student to engage in reflective activities – journaling, presentations, and one-on-one discussions.

Assessment: Your assessment of the student and the student's experience is particularly important to us. Your honest feedback is appreciated. You are the person who will have hands on contact with the student. You can tell us not only what the student has accomplished but also how we improve the program.

Training: We are happy to provide training for you and your office on effective supervision techniques, to assist you with giving feedback, to brainstorm how to address a student who is underperforming, or any other concerns you might have about an extern or the program. We also maintain training materials on our externship website.

ORIENTATION CHECKLIST

On the extern's first day, please make sure to review the following:

1. The function of your agency, office, or organization;
2. The role of the student extern in the office's functioning;
3. The nature of the student's work;
4. Relevant office policies and chain-of-command;
5. Schedule for weekly meetings with the student;
6. The student's expectations for the externship;
7. The student's work schedule;
8. Layout of the office and library and introduction to others;
9. Showing the student his/her workspace; and
10. Explanation of the first assignment.

EXTERNSHIP LEARNING CONTRACT

Students registering for externships must fill out this form with input from the Director of Externships and field supervisor and email to: Amanda Bynum, Director of Externships & Bar Success, abynum@email.arizona.edu

At the conclusion of the externship, separate evaluation forms must be completed by the field supervisor and the student and sent to the Director of Externships. Blank forms are available through the externships link on the website.

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|--|--|---|--|
| Student name: | | | |
| Placement Office including address | | | |
| Field Supervisor Name and Contact information: | | | |
| Faculty Supervisor: | | | |
| Semester of Externship (i.e. Fall 2017): | | Number of semesters completed: | |
| Units of Credit Requested: | | # of total hours of field work to be completed: | |
| Start date of externship | | End date of externship: | |
| Date faculty supervisor and field supervisor communicated to establish educational purposes of externship and the role of the field supervisor, and to discuss the manual for externship supervisors available on the Law College website: | | | |
| How, and how often, faculty and field supervisor will communicate (must be "regular"): | | | |

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| <p>Schedule for completing hours required: (Please explain, in as much detail as you can at this point, the schedule you intend to keep in order to complete this hours required for this externship. For example, "I will work in the field office from 2 – 4:30 pm, Wednesdays and Fridays for 10 weeks to complete the 50 hours needed for the one unit of credit I am requesting.").</p> |
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| Educational Objectives and Outcomes: |
| 1. |
| 2. |
| 3. |
| 4. |
| Work to be performed during the externship |
| 1. |
| 2. |
| 3. |
| 4. |
| How student's performance will be evaluated by the field supervisor: |
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| How student's performance will be evaluated by the faculty supervisor: |
| |
| How and how often faculty supervisor and student will communicate about the student's experience [this must be at least every other week] and how students will engage in guided reflection: |
| |

EXTERN'S AGREEMENT:

The extern should fill in the necessary information, initial each standard, and add any comments on this form. As an extern, I agree to the following:

_____ **Professionalism:** I agree to follow directions, seek clarification and advise in a timely fashion, and comport myself with professionalism and integrity.

_____ **Development Goals:** I will create goals for the semester of how I plan to develop professionally and will discuss these goals with my field supervisor and Director of Externships.

_____ **Academic Component:** I agree to complete all required readings, evaluations and any other assignments requested by the Director of Externships. I agree to attend or view the classroom component online.

_____ **Opportunities for Reflection:** I will reflect on the observations, experiences, ethical considerations, and other issues that arise during my externship. As indicated in the course syllabus, I will submit reflection papers or journals analyzing my experiences. In so doing, I will be mindful of my confidentiality obligations.

_____ **Self-Evaluation:** I will strive to self-assess on each assignment I complete. In so doing, I will consider what I did effectively and areas for improvement. Where possible and appropriate, I will discuss my self-assessment with the Director of Externships and site supervisors. I will be open to feedback from my supervisors and will consider how it can be applied specifically and globally to my future work.

FACULTY SUPERVISOR'S AGREEMENT:

_____ I have read the Bylaws relating to Externships as well as ABA Standard 304, and understand that academic credit shall only be awarded if the requirements set forth above are met during the externship.

_____ If the student will be receiving both credit and compensation, all work done for both credit and pay will be consistent with the educational goals and requirements of the learning contract.

_____ I have worked with the student to develop a written plan to protect confidential information but also enable the student to convey sufficient information to the Faculty Supervisor to achieve the learning goals of the placement.

_____ Credit will be awarded only when the Faculty Supervisor has provided to the Director of Externships a copy of the Faculty and Field Supervisors' written evaluations of the student's performance.

FIELD SUPERVISOR'S AGREEMENT:

Please fill in the necessary information, initial each standard, and add any comments to this form. As a Field supervisor, I agree to the following:

_____ **Manual:** I have reviewed and understand the Field Supervisor Manual related to University of Arizona College of Law Externships.

_____ **Orientation:** I will ensure that the extern receives an orientation, including a discussion of office procedures and confidentiality, and an overview of the work and expectations of the extern.

_____ **Supervision:** I have the authority, ability and resources to ensure that the extern has a supervising attorney who will actively direct, monitor, and mentor him or her throughout the semester.

_____ **Communication:** I will inform the extern of the system for assigning work projects and ensure he or she is given clear deadlines and will receive ongoing guidance for managing the workload.

_____ **Skills Development:** The extern will be engaged in a substantial lawyering experience that includes multiple opportunities for performance, feedback, and self-evaluation.

_____ **Assignments:** The extern will be assigned work that is similar to that of a law-clerk or entry-level attorney, including exposure to a broad range of lawyering skills. Assignments may include drafting documents and pleadings, researching and writing memoranda, interviewing clients and witnesses, attending conferences, negotiations or mediations, and observing or participating in meetings, depositions, or court proceedings. Administrative work will be kept to a minimum.

_____ **Feedback:** The extern will be provided specific, individualized, and timely feedback on their work.

_____ **Observation:** The extern will have opportunities to observe court proceedings, client/staff/strategy meetings, and other appropriate professional activities.

_____ **Opportunities for Reflection:** The extern will meet with his/her supervisor, other attorneys and staff to discuss his/her observations, experiences, and other issues relevant to the profession.

_____ **Supervisor Accessibility:** The extern and supervising attorney will meet at least weekly. IN addition to any standing meetings, the supervising attorney will be able to meet with the extern as needed to provide support and feedback on assignments.

_____ **Forms:** I will comply with the school's evaluation requirements, including reviewing any student self-assessments, completing evaluations, and providing feedback to the extern in a timely manner.

_____ **Logistics:** I will verify that the extern has a designated workspace and access to the tools (i.e. telephone, computer, library) and support reasonably necessary to complete assignments.

_____ **Bar Admission/Status:** I certify that I am currently an active member of the state bar of _____.

_____ **Legal Compliance:** My organization is responsible for ensuring that our labor and employment practices are in compliance with state, local, and federal laws as related to the externship.

FOR CORPORATE/FOR-PROFIT PLACEMENTS: Will the student be receiving pay? YES _____ NO _____ ***Credit-only, nonpaid externships:** To ensure compliance with federal employment law, the student must not be assigned fee-generating matters, the student's contribution must not displace the work of regular employees and must be performed under close supervision of a licensed attorney. The corporation must not derive any immediate advantage from the law student's activity, though it may derive long-term intangible benefits such as the general reputational benefits associated with the student's work on particular projects.

Signature of Student/Date

Signature of Field Supervisor/Date

Faculty Supervisor/Date



EXTERNSHIP PROGRAM
MID-TERM SELF-ASSESSMENT

| | | | |
|------------------------------|--|----------------------------|--|
| Student Name | | DATE OF ASSESSMENT: | |
| Placement Office | | Field Placement Supervisor | |
| Date/semester of externship: | | Total hours completed: | |

At this midpoint in your externship, you have completed a body of work and received feedback from which you may assess your skills. You are encouraged to be thoughtful, candid and specific in your assessment. Upon completion, please discuss your self-assessment with your field supervisor and make any modifications needed. If something is not applicable, please explain the reason in the comment box.

Please provide a brief description of the range of tasks and responsibilities you have been given so far:

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Research and Analytical Skills: How well are you able to identify and address relevant issues; how thorough and complete is your research; are you able to develop an effective and efficient research strategy?

Comments/examples:

| |
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Writing Skills: How well-organized, clear, grammatically correct, and persuasive is your writing? Are your citations accurate and in proper form? Is your writing tailored to your audience's needs?

Comments/examples:

Legal Knowledge: Have you demonstrated adequate familiarity with basic concepts of applicable law and procedure?

Comments/examples:

Oral Skills: How well do you orally communicate concerning legal matters; how clear is your presentation; how well do you respond to questions?

Comments/examples:

Ethical Concerns: Have you recognized ethical issues and raised them appropriately, do you conform with office confidentiality protocols, etc.?

Comments/examples:

Attitude and Work Habits: How dependable and reliable are you? How well do you manage your time? Do you demonstrate attention to detail? How organized and up to date are you with your assignments? How well do you receive feedback and incorporate suggestions into subsequent work?

Comments/examples:

Professionalism: Do you demonstrate maturity, good judgment, and sensitivity in interactions with other staff, judges, etc?

Comments/examples:

Please describe the areas/skills that you will focus on improving over the remainder of the semester.

Have you been receiving specific, individualized and timely feedback on your assignments? Is the feedback oral, written or both?
Has the feedback been effective?

Are there any ways in which your externship experience can be enhanced?

Please discuss the content of this evaluation with your supervisor.

SUPERVISORS COMMENTS ON EXTERN'S SELF-ASSESSMENT: Is the assessment consistent with the feedback the extern has received to date, thoughts on what the extern should focus on in the remaining weeks, etc.

Student Extern Signature

Date

Field Placement Supervisor

Date

Faculty Supervisor

Date

Please return to:
Amanda Bynum
Director of Externships & Bar Success
abynum@email.arizona.edu
(520)621-4212



EXTERNSHIP PROGRAM

Placement Evaluation: Field Supervisor

| | | | |
|--|--|------------------------|----|
| Student Name | | | |
| Placement Office | | | |
| Field Placement Supervisor completing evaluation: | | | |
| Date/semester of externship: | | Total hours completed: | |
| 1. Describe the types of legal tasks, assignments or other activities performed by the student at this placement: | | | |
| | | | |
| 2. Did the student perform his/her assignments satisfactorily? Explain: | | Yes | no |
| | | | |
| 3. Did the student spend the required amount of time at your office? | | Yes | no |
| 4. How much time per week did you spend supervising the student (including explaining assignments, reviewing written work, preparing and discussing cases, etc?) | | _____ hours | |
| 5. Describe the progress the student made during the course of the semester (i.e. improvements toward the educational goals identified at the beginning of the semester, using examples when possible. | | | |
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6. What other benefits do you think the law student derived from this placement?

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7. Please describe the student's areas of strength:

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8. Please identify areas for further growth:

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9. Please describe the student's level of professionalism:

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10. Do you have any concerns regarding the student's performance?

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| 11. Do you recommend the student receive credit? | Yes | no |
| 12. Have you reviewed this evaluation with the student? | Yes | no |
| 13. May we share your comments with the student? | Yes | no |
| Please share any comments and suggestions regarding the field placement/externship program: | | |
| | | |

Signature

Date

Please return to:
Amanda Bynum
Director of Externships & Bar Success



abynum@email.arizona.edu / (520) 621-4212



EXTERNSHIP PROGRAM
MID-TERM SELF-ASSESSMENT

| | | | |
|------------------------------|--|----------------------------|--|
| Student Name | | DATE OF ASSESSMENT: | |
| Placement Office | | Field Placement Supervisor | |
| Date/semester of externship: | | Total hours completed: | |

At this midpoint in your externship, you have completed a body of work and received feedback from which you may assess your skills. You are encouraged to be thoughtful, candid and specific in your assessment. Upon completion, please discuss your self-assessment with your field supervisor and make any modifications needed. If something is not applicable, please explain the reason in the comment box.

| |
|---|
| Please provide a brief description of the range of tasks and responsibilities you have been given so far: |
| |
| Research and Analytical Skills: How well are you able to identify and address relevant issues; how thorough and complete is your research; are you able to develop an effective and efficient research strategy? |
| Comments/examples: |
| |
| Writing Skills: How well-organized, clear, grammatically correct, and persuasive is your writing? Are your citations accurate and in proper form? Is your writing tailored to your audience's needs? |
| Comments/examples: |
| |

Legal Knowledge: Have you demonstrated adequate familiarity with basic concepts of applicable law and procedure?

Comments/examples:

Oral Skills: How well do you orally communicate concerning legal matters; how clear is your presentation; how well do you respond to questions?

Comments/examples:

Ethical Concerns: Have you recognized ethical issues and raised them appropriately, do you conform with office confidentiality protocols, etc.?

Comments/examples:

Attitude and Work Habits: How dependable and reliable are you? How well do you manage your time? Do you demonstrate attention to detail? How organized and up to date are you with your assignments? How well do you receive feedback and incorporate suggestions into subsequent work?

Comments/examples:

Professionalism: Do you demonstrate maturity, good judgment, and sensitivity in interactions with other staff, judges, etc?

Comments/examples:

Please describe the areas/skills that you will focus on improving over the remainder of the semester.

Have you been receiving specific, individualized and timely feedback on your assignments? Is the feedback oral, written or both? Has the feedback been effective?

Are there any ways in which your externship experience can be enhanced?

Please discuss the content of this evaluation with your supervisor.

SUPERVISORS COMMENTS ON EXTERN'S SELF-ASSESSMENT: Is the assessment consistent with the feedback the extern has received to date, thoughts on what the extern should focus on in the remaining weeks, etc.

Student Extern Signature Date

Field Placement Supervisor Date

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

This fact sheet provides general information to help determine whether interns must be paid the minimum wage and overtime under the Fair Labor Standards Act for the services that they provide to “for-profit” private sector employers.

Background

The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer. Internships in the “for-profit” private sector will most often be viewed as employment, unless the test described below relating to trainees is met. Interns in the “for-profit” private sector who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.*

The Test For Unpaid Interns

There are some circumstances under which individuals who participate in “for-profit” private sector internships or training programs may do so without compensation. The Supreme Court has held that the term “suffer or permit to work” cannot be interpreted so as to make a person whose work serves only his or her own interest an employee of another who provides aid or instruction. This may apply to interns who receive training for their own educational benefit if the training meets certain criteria. The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.

The following six criteria must be applied when making this determination:

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;
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.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act’s minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA’s definition of “employ” is very broad. Some of the most commonly discussed factors for “for-profit” private sector internship programs are considered below.

Similar To An Education Environment And The Primary Beneficiary Of The Activity

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer's actual operations, the more likely the internship will be viewed as an extension of the individual's educational experience (this often occurs where a college or university exercises oversight over the internship program and provides educational credit). The more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer's operation, the more likely the intern would be viewed as receiving training. 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. On the other hand, if the interns are engaged in the operations of the employer or are performing productive work (for example, filing, performing other clerical work, or assisting customers), then the fact that they may be receiving some benefits in the form of a new skill or improved work habits will not exclude them from the FLSA's minimum wage and overtime requirements because the employer benefits from the interns' work.

Displacement And Supervision Issues

If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods, these interns should be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek. If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled compensation under the FLSA. Conversely, if the employer is providing job shadowing opportunities that allow an intern to learn certain functions under the close and constant supervision of regular employees, but the intern performs no or minimal work, the activity is more likely to be viewed as a bona fide education experience. On the other hand, if the intern receives the same level of supervision as the employer's regular workforce, this would suggest an employment relationship, rather than training.

Job Entitlement

The internship should be of a fixed duration, established prior to the outset of the internship. Further, unpaid internships generally should not be used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period. If an intern is placed with the employer for a trial period with the expectation that he or she will then be hired on a permanent basis, that individual generally would be considered an employee under the FLSA.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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

* The FLSA makes a special exception under certain circumstances for individuals who volunteer to perform services for a state or local government agency and for individuals who volunteer for humanitarian purposes for private 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 in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible. WHD is reviewing the need for additional guidance on internships in the public and non-profit sectors.



SEP 12 2013

Laurel G. Bellows
Immediate Past President
American Bar Association
321 North Clark Street
Chicago, IL 60654-7598

Dear Immediate Past President Bellows:

I am writing in response to the concerns you raised regarding the limitations imposed by the Fair Labor Standards Act (FLSA) on the ability of law students to secure work experience through unpaid internships with private law firms where the work they perform is limited to pro bono activities.

Generally, the FLSA does not permit individuals to volunteer their services to for-profit businesses such as law firms. In most instances, individuals who are suffered or permitted to perform work by a covered for-profit entity are considered employees under the FLSA and entitled to minimum wage and overtime unless they are covered by a specific exemption or exclusion. The FLSA does, however, permit individuals to participate in unpaid internships or training programs conducted by for-profit entities if certain criteria are met.

Under certain circumstances, law school students who perform unpaid internships with for-profit law firms for the student's own educational benefit may not be considered employees entitled to wages under the FLSA. The determination of whether such an internship meets this exclusion depends upon all of the facts and circumstances of each student's case. Where all of the following criteria are met, an employment relationship does not exist under the FLSA¹:

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;
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.

¹ See WHD Fact Sheet 71, enclosed, for further guidance.

While the intern (or trainee) exclusion from the definition of employment is necessarily quite narrow because the FLSA's definition of "employ" is very broad, it may be met in some circumstances when law students perform unpaid internships for for-profit law firms. We understand your specific concern with respect to law students involves unpaid internships (whether or not any academic credit is provided) in which the law school places students with for-profit law firms and acts as an intermediary empowered to monitor the progress of the internship, and in which the law firms provide written assurance that the students will receive an educational experience related to the practice of law and that the student will be assigned exclusively to non-fee-generating pro bono matters.

Where the program is designed to provide a law student with professional practice in the furtherance of his or her education and the experience is academically oriented for the benefit of the student, the student may be considered a trainee and not an employee. Accordingly, where a law student works only on pro bono matters that do not involve potential fee-generating activities, and does not participate in a law firm's billable work or free up staff resources for billable work that would otherwise be utilized for pro bono work, the firm will not derive any immediate advantage from the student's activities, although it may derive intangible, long-term benefits such as general reputational benefits associated with pro bono activities. Where law firm internships involve law students participating in or observing substantive legal work, such as drafting or reviewing documents or attending client meetings or hearings, the experience should be consistent with the educational experience the intern would receive in a law school clinical program. Such internships also offer significant benefit to law students because legal representation and licensing requirements necessitate that unlicensed law students receive close and constant supervision from the firm's licensed attorneys. Such supervision both provides an educational benefit to the law student, and reduces the time that firm attorneys may spend on other work, potentially impeding the firm's operations. Thus, where the hiring of unpaid law student interns does not displace regular employees, the law student is not necessarily entitled to a job at the conclusion of the internship, and the law firm and the law student agree that the intern is not entitled to wages, an unpaid internship with a for-profit law firm structured in such a manner as to provide the student with professional experience in furtherance of their education, involving exclusively non-fee generating pro bono matters would not be considered employment subject to the FLSA.² In contrast, a law student would be considered an employee subject to the FLSA where he or she works on fee generating matters, performs routine non-substantive work that could be performed by a paralegal, receives minimal supervision and guidance from the firm's licensed attorneys, or displaces regular employees (including support staff).

You also raised concerns that recent law school graduates who have not yet passed any state bar should be able to participate in unpaid internships with law firms working on pro bono matters to the same extent as current law students. But we understand from your communications that the Labor and Employment Law Section leadership has

² The Department considers all of the facts in assessing whether all of the criteria are met. A different set of circumstances may, thus, lead to a different conclusion.

reviewed this matter and determined that law graduates may not volunteer for private law firms without pay in the same manner. Likewise, we believe that the analysis would be different for law school graduates than for law students as the former have completed their legal education. Additionally, law schools would not have the same ability to act as intermediaries between graduates and the law firms that they do with current students and would not be able to monitor the internship's compliance with these principles.

I hope that this summary is helpful in clarifying the limitations the FLSA places on unpaid work in various situations.

Sincerely,

A handwritten signature in cursive script that reads "M Patricia Smith". The signature is written in dark ink and is positioned below the word "Sincerely,".

M. Patricia Smith
Solicitor of Labor