



May 17, 2004

FLSA2004-5NA

Dear *Name\**,

Re: FLSA status of student interns

This is in response to your request for an opinion concerning the application of the Fair Labor Standards Act (FLSA) to college students participating in your client's internship program. You ask whether an employer-employee relationship exists under the FLSA for students in the internship program. We regret the delay in responding to your request.

According to the information that you provided, the purpose of the internship is to teach "marketing, promotion, and statistical analysis to students in a real world setting." You note that, "the internship will be structured like a college Marketing course complete with program description, outline, syllabus and assignments." The student interns work a flexible, part-time schedule of approximately 7-10 hours per week. They perform the work of a field marketing representative on-campus and are expected to assume the role of regular staff members of the company. The duties of the student interns include wearing items of clothing embossed with the company logo while distributing stickers and flyers and evaluating the response of other students; collecting data on the composition of the campus population and that of the surrounding city; utilizing on-line chat rooms to track the effectiveness of certain web sites and the ability to drive on-line traffic to different sites; obtaining detailed contact information for five of the most popular club/bars, coffee shops, bookstores, record shops, beauty salons, clothing stores, and skate shops; and surveying 50 people on campus and compiling data to predict trends in the area and nationally.

Students may participate as interns only if they obtain college credit for the internship. While Marketing and Communication majors are preferred, any student will be accepted if his/her academic advisor approves the course. A faculty coordinator is responsible for advising the student interns and consulting with the company supervisor on a regular basis regarding the student's performance. The company assumes responsibility for direct supervision of the student interns. A company supervisor consults with the faculty coordinator about any problems the student encounters and submits an evaluation of the student at the completion of the program. The company is not obligated to hire the student interns, and the students are under no obligation to accept employment with the company.

The FLSA defines an employee as "any individual employed by an employer." 29 U.S.C. 203(e)(1). Similarly, the FLSA definition of "[e]mploy" includes to suffer or permit to work." *Id.* The Supreme Court held over fifty years ago in *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947), that the FLSA definition of "employ" does not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether student interns are employees under the FLSA will depend upon all the circumstances surrounding their activities. For example, where certain work activities are performed by students that are simply an extension of their academic programs, we often would not assert that an employer-employee relationship exists for purposes of the FLSA. Thus, provided the six criteria listed below are met, where educational or training programs are designed to provide students with professional experience in the furtherance of their education, and the training is academically oriented for the benefit of the students, it is our position that the students will not be considered employees of the firm to which they are assigned. The six criteria, derived from the Supreme Court's decision in *Portland Terminal*, are as follows:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainee;
3. The trainees do not displace regular employees, but work under close observation;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees and on occasion the employer's operations may actually be impeded;



5. The trainees are not necessarily entitled to a job at the completion of the training period; and
6. The employer and the trainee understand that the trainees are not entitled to wages for the time spent in training.

The Department of Labor has consistently applied this test in response to questions about the employment status of student interns. See, e.g., attached opinion letters dated May 8, 1996, July 11, 1995 and March 13, 1995 and WH Publication 1297 ("Employment Relationship Under the Fair Labor Standards Act").

According to the information submitted, it is not clear that each of the six criteria above is satisfied. The internship program satisfies the first criteria. The company's training program is similar to that which would be given in a school. The internship involves the students in real life situations and provides them with an educational experience that they could not obtain in the classroom, which generally is related to their course of study. The program also appears to satisfy the second criteria. The internship inures to the benefit of the students, who receive college credit for performing the internship, although it is not a required program. You have not provided sufficient information for us to determine whether the internship program satisfies the third and fourth criteria, however. While it does not appear likely that the student interns displace regular employees, since they work a maximum of 10 hours per week, they are "expected to assume the role of regular staff members of the company." You did not describe how closely the students are supervised and whether at any time the company's operations are impeded by virtue of the internship program. We also do not know whether the employer may derive an immediate benefit from the activities of the students, who analyze trends on campus and develop marketing information in a number of areas, including a list of contacts for a large number of area businesses, data on the "guerilla marketing" of the company's product on the internet, a detailed analysis of the population of the campus and the city, and a prediction of local and national trends. The internship program does appear to meet the fifth and sixth criteria because the student interns are not necessarily entitled to a job with the company at the end of their internship, and they are not compensated during the internship period.

On the basis of the information that you have provided and the application of the Department of Labor's six criteria, we cannot say definitely whether an employment relationship exists under the FLSA between the company and the student interns. However, we hope that you are able to use this information to review the program in light of the relevant criteria.

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

We trust that the above information is responsive to your inquiry.

Sincerely,

Barbara R. Relerford  
Office of Enforcement Policy  
Fair Labor Standards Team

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