



## THE CATHOLIC UNIVERSITY OF AMERICA

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This memorandum addresses legal issues that faculty should understand when dealing with an outside organization who is offering a student Internship or when serving as an advisor to a student serving in an off-campus Internship. Please refer to this document as guidance but contact the Office of General Counsel with any legal question or issues.

**Agreement:** Every for-credit Internship placement must have an Agreement between the student and the employer to define the scope of the Internship and make all parties aware of their responsibilities. Below are a few legal provisions to include in each Agreement. A “Sample Internship Agreement” (based on the Honors department form) is attached as an example.

- **Student Section.** Should include:
  - Academic requirements the student must fulfill. In the event of a dispute, this will provide the University a clear record of student responsibilities.
  - Student agreement to comply with the rules, regulations, of the employer and the rules and policies of the University.
  - Student agreement that failure to comply with University rules and regulations can lead to removal from the Internship program, failure to receive a passing grade, or other disciplinary action at the University’s discretion.
  - Student agreement to notify their Faculty Advisor or another University official of any problems that may arise during the Internship.
  - Explanation that the student is responsible for any and all of their own intentional torts and/or criminal actions.
  - Explanation that the University has no control over what happens outside campus and cannot guarantee student safety in an Internship environment.
  
- **Employer Section.** Should include:
  - Any requirements that the department wants to place on the employer (ex: forms for Employer to complete; mandating minimal clerical work for Student; and time off for student to meet with faculty adviser).
  - Employer agreement to provide a direct supervisor to the Student, who would be responsible for directing work and completing the required evaluations.
  - Employer agreement to comply with all applicable laws and regulations, including the Fair Labor Standards Act.
  - Employer agreement to provide a safe and secure work environment for the Student and agreement to inform the Student/University of problems or unsafe conditions.

- Employer agreement to provide requisite trainings, meaningful work experience, and regular supervision for the student.
- Employer agreement to accept primary responsibility for the supervision and control of the Student while at the Internship site.
- (only if applicable) Employer should agree to pay the Student the agreed upon compensation and benefits.

**Employer Agreements:** If a student is presented with other Agreements to sign by the employer, the Office of General Counsel is available to review and provide guidance. As a reminder, **only individuals with written signature authority delegated from the President of the University may sign on behalf of and bind the University.** Professors, Deans, and Department Chairs do not have signature authority. Please see the University's signature authority policy found here: <http://policies.cua.edu/finance/finance/Contracts/Contract.cfm>

**Hold Harmless Agreements:** It is becoming increasingly common for employers to ask the University to sign a hold harmless agreement that releases the Employer from any liability and has the University indemnify that organization for any costs incurred. These clauses are not favorable and shift a great deal of risk, sometimes unfairly, from the Employer to the University.

As a general matter, these clauses are strongly disfavored by the University. However, because some employers will not accept an intern without a hold harmless agreement, the University does not have an absolute policy against such clauses if reasonable terms can be negotiated. But it is important to let students know that there is no guarantee that an Employer's terms will be accepted by the University, and the decision to accept or reject such terms are in the sole discretion of the University.

If a Student is presented with a hold harmless agreement, please contact the Office of General Counsel. Our office will do our best to negotiate reasonable terms with the employer that do not unreasonably expose the University to risk. Some red flags that the University cannot agree to are disclaimers of the employer's negligence or one-sided indemnification clauses.

**Insurance:** The University's insurance policy covers students participating in an Internship for credit or with explicit approval from the University. This includes Internships abroad as long as they are for-credit or done with explicit approval from the University.

A student that is participating in an Internship on his/her own, not for credit and without explicit approval from the University, is not covered by the University's insurance policy.

## Fair Labor Standards Act (FLSA)

- **General FLSA:** The definition of the employee/employer relationship under the FLSA is broad – whenever an employer permits another to work, and in most such circumstances the FLSA then kicks in to provide rules for compensation and working conditions. But the Supreme Court has held that the Act does not apply to those working for their own advantage, which should be the case for most Internships – that is the Student obtains an advantage and the Employer is mainly providing an opportunity for learning and professional development, as opposed to obtaining the services of a regular employee, who has specific responsibilities and contributes to the organization’s profit or mission accomplishment. These concerns have resulted in a six part test, adopted and interpreted by the Department of Labor (DOL).  
<http://www.dol.gov/whd/regs/compliance/whdfs71.htm>
  - Exemptions from the Law: Anyone who volunteers for a public agency which is a political subdivision of a state or the federal government is exempt from FLSA requirements. This means that Congress exempted itself from the law, so no need to worry about Capitol Hill Internships.
  - Six Part Test: According to the DOL, all six factors present means that an employment relationship does not exist under FLSA. Recently, other jurisdictions have questioned this test and its approach. Below are the six factors annotated based on how they have been previously interpreted by DOL in a variety of court decisions.
    - 1. *Extension of the Classroom Experience:* Interpreted broadly by Wage and Hour Division of DOL. Work must constitute “the practical application of material taught in the classroom.”
      - NOTE: The granting of academic credit alone does not guarantee that this criterion or any factor is present.
    - 2. *Benefit to the Student:* Should be relatively easy to satisfy considering that student chose to participate in the Internship.
    - 3. *Student does not displace regular employees:* Look at specific facts and circumstances. If the student works a few hours during the week with light responsibility, there is most likely no problem. If the student works 25-35 hours/week with heavy responsibility, then it is worth further scrutiny. Also, whether individuals are let go when interns are hired could be a factor in the analysis.
    - 4. *Employer derives no immediate advantage from activities of the Student:* Other courts have recognized that the employer will necessarily derive “some” benefit from having an Intern and training them. Courts have also found that *de minimus* menial tasks do not pose a problem, if

isolated. Here, the requirement seems to be guarding against a situation where an employer uses work by an Intern without any supervision or guidance, defeating the purpose of getting an educational opportunity. Case law suggests that if an employer needs to constantly supervise the student, even if the student's work product is used by the employer, the benefit would not be "immediate." Similarly, a student's written work can be used if an employer revises/edits/collaborates with the student.

- 5. *Student not entitled to job at conclusion*: This does not mean an employer cannot hire a former student Intern, just that there can be no expectation of future employment.
  - 6. *Employer and Student understand not entitled to wages*: This can be satisfied in the Agreement signed before the Internship begins.
- This DOL test is generally easier to meet when students are working for non-profit Employers, but it is not automatic.
  - In the Internship Agreement, the University puts the responsibility for compliance with the FLSA and other relevant laws on the employer. Despite this, familiarity with these laws is important to offer advice to students and, when necessary, hold employers accountable.
  - **Any specific questions regarding FLSA analysis or other legal issues should be brought to the Office of General Counsel.**
- **For-Profit Employers Asking for the University to Post a Work Opportunity Without Pay or Academic Credit:** Internship opportunities with a for-profit Employer that are offered without pay or credit might not meet the standards of the FLSA. Because these opportunities could violate the law and there is potential for students to be misled or taken advantage of, the University should do its due diligence to ensure that these jobs meet the FLSA before posting.

Employers should first be encouraged to work through the academic process in a future semester or provide legally appropriate compensation for that semester. In some circumstances, however, this may not be possible. If the for-profit Employer can only post an opportunity without pay or credit, the University should follow up with the employer to ask for more details about the job and how it meets the FLSA.

The Office of General Counsel should then be consulted for FLSA analysis. A for-profit opportunity can satisfy the FLSA if the Employer pays the student an appropriate wage, there is an exemption in the law, or an employment relationship does not exist (as determined by the six part test). If the opportunity appears to meet the FLSA, then the job can be posted on University job boards.