

# Department of Labor Adopts New Intern Test

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On January 5, 2018, the Department of Labor (DOL) announced that it will conform to case law and no longer follow the six-part test it previously recommended for determining whether interns are employees under the Fair Labor Standards Act (FLSA). The DOL made the announcement shortly after the U.S. Court of Appeals for the Ninth Circuit became the fourth federal appellate court to reject the DOL's test in favor of a more flexible approach called the "primary beneficiary test." Unlike the strict test previously recommended by the DOL, the primary beneficiary test considers the following non-dispositive factors to determine which party is the primary beneficiary of the intern-employer relationship:

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.

The DOL's new fact sheet adopting the primary beneficiary test is available [here](#).

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