

Excerpts from Fair Labor Standards Act

THE FAIR LABOR STANDARDS ACT

Trainees

The Supreme Court has held that the words "to suffer or permit to work," as used in the Act to define "employ," do 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 trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

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 trainees or students;
3. The trainees or students do not displace regular employees, but work under their close observation.;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

"In situations where students receive academic credit applicable toward graduation from a bona fide vocational, secondary, or postsecondary institution of higher education, and if the program also provides students with work experience in real life situation with a business, we do not believe that an employment relationship exists....(US Dept. Of Labor-Wage & Hour Division)"

"In situations where students receive college credit applicable toward graduation when they volunteer to perform internship under a college program and the program involves the students in real life situations and provided the students with educational experiences unobtainable in a classroom setting, we do not believe that an employment relationship exists between the students and the facility providing the instruction (U.S. Dept. Of Labor, Wage and Hour Division)."