

## **U.S. Department of Labor Backs Away From its Onerous Internship Standard and Adopts Primary Beneficiary Test**

In January of this year, the U.S. Department of Labor (“DOL”) updated its standard for determining when an intern qualifies as an intern or is actually an employee. This new standard provides for a new flexible standard that is consistent with numerous court rulings over the past few years (citations omitted). The courts rejected the DOL’s prior standard as being too rigid and instead adopted what is referred to as the “primary beneficiary” test. The primary beneficiary test looks to the following seven factors:

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.

Unlike the old test where each factor had to be met, under the new test no one factor is determinative and there is no bright line rule that can be relied upon either. Rather, each internship has to be evaluated based upon its own merits. Regardless, this new standard for determining internship status is welcome news for employers and students seeking internships.

*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

Questions regarding this article or past articles may be e-mailed to Christina Harris Schwinn at [christinaschwinn@paveselaw.com](mailto:christinaschwinn@paveselaw.com). To view past articles written by Ms. Schwinn please visit the firm's website at [www.paveselaw.com](http://www.paveselaw.com). Ms. Schwinn is a partner and an experienced employment and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6228; Telecopier: (239) 332-2243.