

Fair Labor Standards Act and Doctoral Interns

APA has received questions concerning the new Fair Labor Standards Act (FLSA) regulations that are scheduled to go into effect in December and how they might affect doctoral psychology interns. Since internship sites vary considerably, the issues are complex, fact-specific, and require further discussions among various involved entities before a more definitive statement can be made.

The primary question has been “are psychology interns exempt?” The answer to this question is difficult because the term “exempt” appears to be used in three different ways. Some individuals use the term “exempt” to mean that they believe that the interns are not likely to be considered “employees” as that term is used under the FLSA and are therefore not subject to its provisions. Others refer to “exempt” to mean that they believe that the interns are subject to the provisions of the FLSA but are “exempt employees” who, under the terms of the statute, are not subject to overtime pay requirements (which are applicable to the so-called “non-exempt” employees). Finally some individuals use the term “exempt” when discussing whether psychology interns are required to be paid \$47, 476 annually or, alternatively, fit within the exception for the salary or fee requirement given to medical residents and others.

An initial analysis by our employment consultants (evaluating the programs under both the six part test developed by the Department of Labor (DOL) in its opinion letters which are not binding on courts but represent the DOL’s enforcement position - see below * and the “primary beneficiary” test used by most courts) suggests that there is an argument that intern positions, especially if they are consistent with APA accreditation guidelines, are not subject to the FLSA (i.e., the intern is not considered an employee under the FLSA). However, since there is considerable variation in actual internship implementation, there may not be a “one size fits all” answer. Rather each internship (and each intern in each internship) would need to be assessed individually under this analysis. Some state labor laws must also be considered. Ultimately, APA in collaboration with other entities may seek a more uniform resolution that provides additional clarity for all. Currently, however, you need to speak with the HR and/or legal counsel of your institution to make an individualized determination of the impact, if any, of the new FLSA regulations on your doctoral psychology interns.

* According to DOL, an intern will not be considered an employee subject to the FLSA if the following six factors are met: 1. the training or internship, 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 interns; 3. the interns do not displace regular employees, but work under close observation; 4. the employer that provides the training or internship derives no immediate advantage from the activities of the interns, and on occasion the employer’s operations may actually be impeded; 5. the interns are not necessarily entitled to a job at the conclusion of the training period; and 6. the employer and the interns understand that they are not entitled to wages for the time spent in training or the internship. Interpretation of these factors in any given situation requires careful, individualized analysis.

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