



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

MAURA HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

LAUREN E. JONES
SECRETARY

MICHAEL FLANAGAN
DIRECTOR

April 14, 2023

Chief, Fair Labor Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Dear Attorney Lauren Moran,

I write in response to your Division's request for an opinion as to whether the U.S. Department of Labor's changes to its test criteria evaluating internship programs under the Fair Labor Standards Act impacts the application of the Massachusetts Minimum Fair Wage Law.

In 2011, the Department of Labor Standards ("DLS") adopted the six-part test used by the U.S. Department of Labor ("USDOL") to determine whether a program in an educational or charitable institution qualifies as a "training program" within the meaning of G.L. c. 151, § 2, and whether individuals who participate in such training programs may do so without compensation under the Fair Labor Standards Act ("FLSA").

USDOL has since revised its test criteria and utilizes the Primary Beneficiary Test to evaluate internship programs.¹ The Primary Beneficiary Test is a totality of the circumstances approach considering 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.

¹ <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships>

The Department will continue to follow USDOL guidance and adopt the primary beneficiary test. Please do not hesitate to contact me if you have questions regarding the foregoing.

Respectfully,

A handwritten signature in cursive script, reading "Michael Flanagan". The signature is written in dark ink and includes a long, horizontal flourish at the end.

Michael Flanagan, Director
Department of Labor Standards