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NEW YORK STATE

Department of Labor

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# WAGE REQUIREMENTS FOR INTERNS

## In Not-For-Profit Businesses

The New York State Minimum Wage Act and Wage Orders contain pay and overtime requirements. These requirements are in addition to those imposed by federal law. This guideline is intended to help employers and employees understand their rights and obligations under State law.

*\*Note: There is no prohibition on being paid while also receiving academic credit so long as the employer follows all applicable minimum wage and overtime laws.*

### NOT-FOR-PROFIT ORGANIZATIONS OR INSTITUTIONS

There is no section of the Labor Law that exempts “interns” at not-for-profit organizations from the minimum wage requirements. Such workers may fall within one of these exceptions from the minimum wage requirements:

#### VOLUNTEERS

A person may do volunteer work in a not-for-profit organization, if that organization is set up and operates strictly for charitable, educational or religious purposes.

**Other organizations may not use unpaid volunteers.**

#### RESTRICTIONS

Unpaid volunteers may not:

- Replace or augment paid staff to do the work of paid staff
- Do anything but tasks traditionally reserved for volunteers
- Be required to work certain hours
- Be required to perform duties involuntarily
- Be under any contract to hire
  - o by any other person or business
  - o express or implied

- Be paid for their services (except reimbursement for expenses)

A person who is a paid employee of such an organization may volunteer for that organization. However, the type of work they do as a volunteer must be completely different from the type of work they do as an employee.

#### STUDENTS

Students working in a not-for-profit organization or institution are exempt from the State Minimum Wage Act and the Minimum Wage Order for Miscellaneous Industries, so long as:

- The organization is organized and operated exclusively for these purposes:
  - o Charitable
  - o Educational
  - o Religious
- They attend an institution of learning with courses leading to a degree, certificate or diploma
- They are completing residence requirements for a degree such as those required of medical and pharmaceutical students

The work experience need not fulfill a curriculum requirement or even relate to the student’s field of study. Persons continue to be exempt during the periods when school is not in session (e.g., during the summer) if they:

- Were students during the preceding semester

- Have not yet graduated or completed the educational requirements of the program

Graduating students enrolled in an institution who plan to continue their education are considered students between terms. No more than six months should elapse between the end of one program and the start of the next. For the purposes of this exception, a graduating senior at a high school is a student:

- During the summer following graduation
- If enrolled in a college or university the following fall
  - In addition to the records all employers must maintain, a not-for-profit organization that wants to use the student exemption from minimum wage must keep other records. These records must contain:
    - o Student classification
    - o Start date of work
    - o Nature of the work performed

They also need a statement from the student's school, which attests that he or she is a student:

- Whose course of instruction leads to a degree, diploma or certificate **or**
- Who is completing residence requirements for a degree

## **TRAINEES AND LEARNERS**

There is an exception for a trainee in a bona fide training program operated by a not-for-profit organization or institution. It applies if that organization is set up and operated exclusively for charitable, educational or religious purposes. The training must involve:

- Formal instruction
- On-the-job training

During the training program, the learner must:

- Have limited responsibility
- Be under supervision or guidance

The training and guidance provided must:

- Be sufficiently direct and specialized
- Maintain an appropriate ratio of trainers to trainees

and learners

- Last from 2-10 weeks

This applies unless the Commissioner of Labor finds after investigation that the occupation requires more than 10 weeks of training for proficiency.

In addition to the records all employers must maintain, a not-for-profit organization with a trainee must keep records that contain:

- Trainee or learner classification
- Start date of work
- Nature of the work performed
- Nature and extent of the instruction and supervision

Further, any other exceptions available to for-profit employers also are available for non-profitmaking institutions.

This guideline is limited to the State Minimum Wage Act and Orders. It does not address the applicability and/or requirements for Unemployment Insurance, Workers' Compensation, and/or any other law.