

Volunteer Intern or Employee: What Are the Rules?

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You are approached by an individual who has an interest in veterinary medicine with the request that he or she be allowed to spend some time at your practice. The person may be looking for some exposure to veterinary medicine to decide about a career as a veterinarian, veterinary technician or other position at a practice, or the person may be seeking some specific training. Regardless of the motivation, there is no intent on the part of either the practice or the individual that the person be an employee or be compensated for the time spent.

You'd like to say "yes" to the request. However, as with other "volunteer" activities at the practice, there are some issues you should first consider to be certain that you are not exposing your practice to unanticipated consequences. In future articles, we'll discuss issues such as insurance coverage and liability exposure. This discussion will focus on whether the individual will be considered an "employee" under applicable law.

The federal Fair Labor Standards Act (FLSA) defines the term "employ" very broadly as including to "suffer or permit to work." An individual who is "suffered or permitted" to work must be compensated under the FLSA for services they perform for an employer, and must be paid at least the minimum wage and, if applicable, overtime compensation.

There is an exception from the requirement for compensation where the individual is participating in an educational or training program, as, for example, in the instance of a placement of a student with the practice by the UW SVM through its Ambulatory Clinic Rotation or its clinical externship program. This exception may also apply to a person who is receiving training for the person's own educational benefit, although not through a formal program.

The determination of whether a person, outside of a formal educational program, qualifies for the training exception is dependent on satisfying ALL

of the following six criteria: (1) the training is similar to training which would be given in an educational environment; (2) the experience is for the benefit of the individual; (3) the person does not displace regular employees, but works under close supervision of existing staff; (4) the employer that provides the training derives no immediate advantage from the activities of the person, and on occasion its operations may actually be impeded; (5) the person is not necessarily entitled to a job at the conclusion of the training, and (6) both the employer and the individual understand that compensation will not be paid for the time spent.

If the individual is performing productive work that the practice would otherwise need to hire someone to do, the fact that the individual may be receiving some benefits in the form of a new skill or improved work habits will not excuse the employer from meeting the FLSA's minimum wage and overtime requirements because the employer benefits from the individual's work. On the other hand, if the employer is providing job shadowing opportunities to allow the individual to learn certain functions under the close and constant supervision of regular employees, the activity is likely included within the training exception.

You should not use an uncompensated training program as a trial period for individuals seeking employment at the conclusion of the program. If an individual is at the practice for a trial period with the expectation that the person will then be hired on a permanent basis, that individual would generally be considered an employee under the FLSA.

Failure to comply with the requirements of the FLSA can result in severe penalties for the practice. Once having concluded that you meet the requirements so that the individual will not be considered an employee, we recommend that the terms and conditions for the person's presence and activities at the practice be memorialized in a written agreement signed by both the practice and the individual.

