



CAPIC

CALIFORNIA PSYCHOLOGY
INTERNSHIP COUNCIL

CAPIC
100 Ellinwood Way
Suite N275h
Pleasant Hill, CA 94523

925.969.4550
capicadmin@capic.net
www.capic.net

CAPIC Information for Program Members: Interns, Stipends and Labor Laws

This document was last updated on 08/15/2018 by René Puliatti, CAPIC Executive Director.

IMPORTANT: *The clarifications below are provided as general information to our members. CAPIC is not able to provide formal human relations (HR) or legal counsel to its members. If needed, such counsel should be obtained independently.*

CAPIC program members are responsible for following labor laws. The adequacy of CAPIC stipends relates to CAPIC's training guidelines, not to labor laws, which should be considered separately. This memo is a reminder to CAPIC programs of this responsibility, as well as some relevant information for helping them remain in compliance.

- This memo is primarily directed to CAPIC programs who use exceptions to labor law for its interns and postdocs.
- If a CAPIC program is already paying stipends of at least minimum wage and treating the intern as an employee, it is likely not using an exception to normal aspects of labor law, and therefore most concerns raised in this document are probably unnecessary.

Ψ Ψ Ψ Ψ

CAPIC has a policy statement which discourages but does not prohibit unfunded doctoral internships:

"CAPIC discourages unfunded doctoral internships but does not specifically prohibit them when the absence of a stipend is clearly stated at the time the position is offered and accepted (both verbally and in writing). If unfunded positions are offered, training resources should be sufficient to afford the same training as fully funded positions."

As revised 08/27/2010

CAPIC also has stipend requirements for its postdoc program members:

Criteria 13. The program has the necessary financial resources to achieve its training goals and objectives. Postdoctoral stipends shall be reasonable, fair, and stated clearly in advance.

Clarification: Postdoctoral stipends are required.

As amended 06/24/2017

Ψ Ψ Ψ Ψ

CAPIC Info Regarding Interns and Stipends

Document last updated 08/15/2018 by René Puliatti, Esq.

- **Beyond CAPIC’s membership criteria and policies, there are state and federal laws and regulations governing the treatment of trainees, including some exceptions to labor laws (e.g. minimum wage exceptions). CAPIC programs must also abide by these laws and any applicable exceptions to them.**

The default position is that a student at a CAPIC internship program is an intern and not an employee. Additional or different arrangements may be made with the agency, the student and her/his doctoral academic program. Such an “affiliation” or similar agreement may be required between a doctoral academic program and an internship to clarify the responsibilities of all sides.

- Such an agreement is encouraged by CAPIC, and typically address issues not covered by the official Board of Psychology (BoP) forms, such as terms for compensation (if any), health insurance coverage (if any), workers’ compensation coverage (if any) and other issues between the internship, the school and the student. While encouraged, CAPIC does not require, manage or maintain any such arrangements.

In keeping with the student’s role as a trainee and not an employee, it is the nature of the training experience that is most important. In examining the internship experience, authorities generally rely on a 6-part balancing test, based on the Wahling court case, which is described further below.

How an intern is paid or categorized should not be determinative of whether an employment relationship exists. IRS requirements are not labor law requirements, and visa versa.

- Paying interns/trainees as independent consultants or temporary employees and related actions (e.g. filing W-2’s or 1099 tax forms for them), should not by itself establish an employment relationship.
- **In general, stipends should be calculated on a monthly basis, not hourly.** The stipend amount provided in a program’s online CAPIC profile must be given as an annual amount, in order to allow comparisons among internships.
- **In general, sites should avoid using the language of “employee” when referring to interns, but there are some aspects where it is unavoidable (e.g. stipend payments, payroll or tax filings, etc.) and should be acceptable.**
- **Again, how an intern is internally defined by the internship program is a matter for the internship program to decide and to manage.**

Ψ Ψ Ψ Ψ

At present, there are numerous areas of law governing employment of interns and trainees: the Fair Labor Standards Act (FLSA); (2) U.S. Supreme Court case law; (3) the Dep’t of Labor’s (DOL) Wage and Hour Division (WHD) interpretive guidelines; and (4) the National Labor Relations Board (NLRB).

NOTE: CAPIC is aware of the 08/23/2016 decision by the National Labor Relations Board, holding that graduate students working as teaching or research assistants at private universities are employees with the right to collective bargaining. This ruling is not expected to negate the existing, separate guidelines for student interns, particularly the 6-part balancing test articulated in the Wahling court case and detailed in the Department of Labor’s (DOL) interpreted guidelines, which are explained below.

While the FLSA only speaks of medical interns, courts have broadly interpreted that section to also apply to mental health interns and trainees. The Supreme Court, while it has not conclusively ruled on the employee status of interns/trainees, it has developed a six-part balancing test. The WHD in turn

CAPIC Info Regarding Interns and Stipends

Document last updated 08/15/2018 by René Puliatti, Esq.

has used this balancing test to guide employers in determining the employee status of an unpaid intern or trainee. The recent (08/23/16) decision by the NLRB (Case No 02-RC-143012), holding that graduate students working as teaching or research assistants at private universities are employees with the right to collective bargaining, is not expected to negate separate, existing guidelines for psychology student interns at this time, although there has been a trend by the courts and agencies to consider more categories of trainees as employees.

Below is a summary of the relevant guidelines for interns.

- 1. Federal regulations use a 6-part balancing test, based on the Wahling court case, to determine whether an “employment relationship” exists.** If such a relationship exists, the student should be covered under labor laws (e.g. paid minimum wage). If not, the exceptions to regular labor laws should apply for student interns.

As a balancing test, no one criteria is meant to be determinative. The six factors are:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment.
2. The internship experience is for the benefit of the intern.
3. The intern 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 intern; and on occasion its operations may actually be impeded.
5. The intern is not necessarily entitled to a job at the conclusion of the internship.
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

- 2. California courts recognize a similar exemption for interns, following the same guidelines,** and looks at the totality of the circumstances. The more these criteria are met, the more likely the court will consider the trainee not an employee and therefore exempt from minimum wage laws. The converse is also true.

- 3. Again, how an intern is paid or categorized should not be determinative of whether an employment relationship exists.**

- Paying interns/trainees as independent consultants or temporary employees and related actions (e.g. filing W-2's or 1099 tax forms for them), should not by itself establish an employment relationship.
- In general, stipends should be calculated on a monthly basis, not hourly.
 - i. The stipend amount provided in a program's online CAPIC profile must be given as an annual amount, in order to allow comparisons among internships by students.
- In general, sites should avoid using the language of “employee” when referring to interns, but there are some aspects where it is unavoidable (e.g. stipend payments, tax filings, etc.) and should be acceptable.

NOTE: One unresolved and ongoing problem is that different governmental agencies (e.g. IRS vs Dept of Labor), use different standards for determining whether an intern should be considered an employee. While an IRS representative may state that an intern “looks like an employee,” that does not necessarily mean that the intern is an employee for labor law purposes or that the “intern” exception does not apply.

CAPIC Info Regarding Interns and Stipends
Document last updated 08/15/2018 by René Puliatti, Esq.

In Summary:

- CAPIC doctoral internship and postdoctoral training programs are responsible for knowing and for complying with all laws, including labor laws, regulations and the 6-part balancing test noted above for interns.
- CAPIC prefers funded doctoral internships and requires funded postdoc fellowships. Those sites which do not provide stipends should pay particular attention to the 6-part balancing test. If a site is not using any exemption to labor laws (e.g. you are paying a stipend at least equal to minimum wage and treating the intern as an employee), this particular issue is likely not relevant to you.
- CAPIC stipend requirements relate to CAPIC's training guidelines, not to labor laws, which need to be considered separately.

Again, the information here is provided as courtesy to our program members and is not legal counsel. CAPIC is not able to provide human relations (HR) or legal counsel to its members. If needed, such counsel should be obtained independently.

References:

Federal laws and regulations:

- Department of Labor (DOL) Fair Labor Standards Act (FLSA) 8 CCR 11040 §2) which relies on the Supreme Court's "Portland Terminal" case ([Walling v. Portland Terminal Co., 330 U.S. 148 \(1947\)](#)) and its 6-part balancing test.
- See also US DOL, Wage and Hour Division (WHD) Fact Sheet #71: [Doctoral Internship Programs Under The Fair Labor Standards Act](#)
 - This fact sheet was written for for-profit private sector entities and notes that "WHD is reviewing the need for additional guidance on doctoral internships in the public and non-profit sectors."
 - This fact sheet (#71) was applied in a 2013 non-profit case involving an intern at UCSF: <http://www.ibtimes.com/internship-debate-spills-public-sector-university-california-san-francisco-ordered-pay-back-wages>
- 8/23/16 National Labor Relations Board (NLRB) decision, Case No 02-RC-143012.
 - <http://apps.nlr.gov/link/document.aspx/09031d45821c20d4>

California laws and regulations:

- Department of Labor Standards Enforcement (DLSE):
<http://www.dir.ca.gov/dlse/>
- CA DLSE Opinion on Intern Status, dated April 7, 2010:
<https://www.dir.ca.gov/dlse/opinions/2010-04-07.pdf>
- DLSE Manual, Page 46-4 (page 182 of PDF of referenced manual):
http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf

A review of many of these legal issues was also conducted by Cornell University in 2012:

- http://www.cornellhrreview.org/preventing-employer-misclassification-of-student-interns-and-trainees/#_ednref