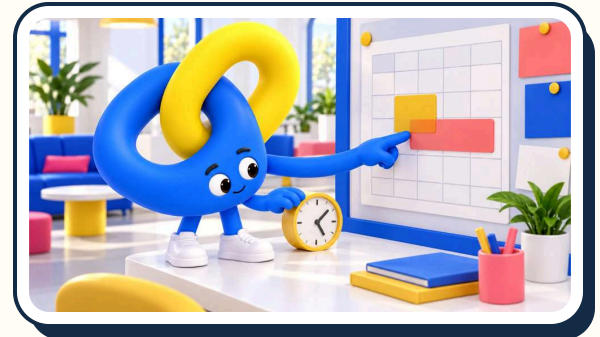


Case 15: Is Rafa's unpaid internship really a job?

A studio offers Rafa an unpaid summer internship running its customer inbox and says college credit makes it legal.

On your own Read What happened and underline what Rafa would do all summer. About 5 minutes.



Nexo, one of the crew's companions, points to where a meeting and a work shift overlap on a calendar. Rafa's internship would take time from his shifts at the family shop.

Your role: You're the one who checks each factor of the test before Rafa says yes. **New skill:** Apply a legal test factor by factor.

What happened

Rafa, 18, is a first-year college student who commutes to class and helps at his family's shop. In April, a studio posted a listing on the campus job board for a "Summer Editing Intern." The internship is unpaid. The listing says the intern will run the customer inbox all summer. Rafa reads it twice, looking for the editing.

On Tuesday at 11:20 a.m., the studio answers Rafa's message. The email says college credit makes it "totally legal" not to pay him. It also asks him to start right after finals.

At lunch, Rafa talks it over with Gia, who fits café shifts around her classes. Gia asks whether the studio paid someone to run the inbox last year. Rafa says the studio's assistant ran it. Taking the internship would also cost Rafa paid shifts at the shop. He has not said yes yet.

Your question: Is the internship mainly training for Rafa or unpaid work for the studio, and what should he ask before he decides?

Key terms

On your own Read each key term and its example, then write your first guess in the box. About 5 minutes.

Primary beneficiary test The primary beneficiary test is how the U.S. Department of Labor decides whether an intern at a for-profit company is an employee.

En español: prueba del beneficiario principal

In this case: The studio gets its customer inbox answered all summer. Rafa asks what he would learn and who would train him.

Fair Labor Standards Act The Fair Labor Standards Act is a federal law that sets minimum wage and overtime rules for most workers.

En español: Ley de Normas Justas de Trabajo

In this case: If Rafa counts as an employee under this law, the studio must pay him at least the minimum wage.

Academic credit Academic credit is credit toward a degree that a school gives for approved work, such as an internship.

En español: créditos académicos

In this case: The studio says credit makes the unpaid role “totally legal.” Credit is one factor out of seven.

Who is involved



Rafa

Offered an unpaid summer internship

“The listing says ‘Summer Editing Intern.’ Then it says I’d run the customer inbox all summer. I read it twice looking for the editing.”



Gia

Talking the offer over with Rafa

“I almost said ‘take it, it’ll look good.’ Easy for me to say. I’m not the one giving up a summer.”

Before you look at the evidence, is Rafa's offer more like training or more like a job?

This image shows a single sheet of white paper with horizontal blue lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Reading passage

Unpaid internships and the primary beneficiary test

On your own Read the passage. At each Stop and think box, pause and answer the question in your head or with a partner. About 6 minutes.

Words to know

- **Primary beneficiary test:** The primary beneficiary test is how the U.S. Department of Labor decides whether an intern at a for-profit company is an employee.
- **Fair Labor Standards Act:** The Fair Labor Standards Act is a federal law that sets minimum wage and overtime rules for most workers.
- **Academic credit:** Academic credit is credit toward a degree that a school gives for approved work, such as an internship.
- **Compensation:** Compensation is all the pay and benefits a worker receives, including hourly rates, bonuses and overtime.

The story: A legal conclusion in a recruiting email

A studio posts a “Summer Editing Intern (unpaid)” listing on a campus job board. The advertised benefits are exposure to the industry and available college credit. The listed duties are running the customer inbox all summer and helping with client files. Rafa, 18, a first-year commuter who works at his family’s shop, reads it twice and cannot find the editing.

The studio’s reply to his inquiry contains a legal conclusion: because interns receive college credit, it is “totally legal” not to pay. The case invites students to treat that sentence the way a lawyer or a careful journalist would. It is a claim, offered by an interested party, about a test the studio does not name.

Rafa’s research on the train reveals that credit is one factor among seven. A conversation with Gia adds a decisive fact. The inbox was run last year by a paid assistant. Gia also models two useful disciplines. She counts the costs of the offer, lost shifts, commuting and a summer without income. And she declines to overstate. She cannot say the internship is illegal. She can say which questions remain unanswered.

Your role is to check each factor of the test before Rafa says yes.

? **Stop and think.** Why is “this internship is illegal” as unsupported as “this internship is totally legal”?

Applying a flexible standard

The **primary beneficiary test** is how the U.S. Department of Labor decides whether an intern at a for-profit company is an employee. It asks whether the intern or the employer is the primary beneficiary of the relationship. An intern who is an employee must be paid under the **Fair Labor Standards Act**, a federal law that sets minimum wage and overtime rules for most workers. The Department's seven factors include educational training and ties to coursework or **academic credit**. They also include accommodation of the academic calendar, a limited duration tied to learning and whether the work complements or displaces paid employees. Academic credit is credit toward a degree that a school gives for approved work, such as an internship.

The new skill is applying a multi-factor test one factor at a time. It extends Case 12's analogical reasoning from precedent and Case 11's discipline of comparing like with like. Applied here, the analysis separates evidence from gaps. On displacement, the assistant's paid role last year is strong evidence. On academic credit, availability is asserted but unconfirmed. On training and supervision, the record is silent. On duration and calendar, the start date is known, but hours are not. Because the test is holistic and no factor controls, the defensible conclusion is limited. The studio's claim that credit makes nonpayment "totally legal" is unsupported. Whether Rafa would be an employee cannot be decided without more facts. The framework applies to for-profit employers, and state rules may differ.

Case 11's concept of **compensation**, all the pay and benefits a worker receives, frames the economics. The offer's compensation is zero, and Rafa would give up paid shifts. His written request for facts, covering training, a typical week, weekly hours and whether he would be doing the assistant's former job, is both prudent and the only way to apply the test.

 **Stop and think.** How does a flexible, multi-factor test shift power between employers and interns compared with a bright-line rule?

Litigation, inequity and professional ethics

The Second Circuit's decision in *Glatt v. Fox Searchlight Pictures* anchors the modern test. Interns on the 2010 film *Black Swan* performed tasks the opinion lists, including answering phones, taking lunch orders, making coffee, photocopying and filing (U.S. Court of Appeals for the Second Circuit, 2016). The court's 2015 ruling adopted the primary beneficiary question (LAist, July 2, 2015), and the Department of Labor now uses that test (U.S. Department of Labor, Fact Sheet #71, updated January 2018). Legal scholars have analyzed the test in detail (Harvard Law Review, February 9, 2016).

The policy stakes include access. Nearly half of U.S. interns were unpaid in 2022 (PBS NewsHour, August 26, 2023). NACE reports persistent inequity in who receives paid internships (National Association of Colleges and Employers, August 8, 2023). Earlier NACE data found that paid interns received more job offers than unpaid classmates (National Association of Colleges and Employers, March 23, 2016).

Litigation, inequity and professional ethics, continued

On Capitol Hill, most summer interns have gone unpaid, which limits who can pursue those careers (NPR, July 25, 2017).

Professional standards apply to the studio's email. NACE asks employers to comply with laws "associated with local, state, and federal entities" (NACE Principles for Ethical Professional Practice, 2025). The ABA's model rules bar lawyers from knowingly making a false statement of material fact or law to a third person (ABA Model Rules of Professional Conduct, 1983, as amended). A recruiting email is not legal advice, and Rafa is right to treat it as a claim.

 **Stop and think.** NACE data link paid internships to more job offers. What does that suggest about who benefits from unpaid ones?

Sources

Real source | U.S. Court of Appeals for the Second Circuit, via Justia | 2016

Glatt v. Fox Searchlight Pictures

Real source | LAist (AirTalk) | July 2, 2015

Appeals court reverses 'Black Swan' interns' victory over Fox

Real source | U.S. Department of Labor, Wage and Hour Division | January 2018

Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act

Real source | Harvard Law Review | February 9, 2016

Glatt v. Fox Searchlight Pictures, Inc.

Real source | PBS NewsHour (YouTube) | August 26, 2023

Why unpaid internships still exist despite hardships for young workers

Real source | National Association of Colleges and Employers | August 8, 2023

The Class of 2023: Inequity Continues to Underpin Internship Participation and Pay Status

Real source | National Association of Colleges and Employers | March 23, 2016

Paid Interns/Co-ops See Greater Offer Rates and Salary Offers Than Their Unpaid Classmates

Real source | NPR | July 25, 2017

On Capitol Hill, Most Summer Interns Still Go Unpaid

Real source | National Association of Colleges and Employers (NACE) | 2025

NACE Principles for Ethical Professional Practice

Real source | American Bar Association (ABA), Center for Professional Responsibility | No date listed

ABA Model Rules of Professional Conduct

Look at the evidence

On your own Read each document, then fill in both boxes under it. About 8 minutes.

Evidence A | Job listing

Studio listing on the campus job board, April

“Summer Editing Intern (unpaid). Join our fast-paced studio! You’ll run the customer inbox all summer, help with client files and get great exposure to the industry. College credit available.”

Look closely: Which words describe learning? Which words describe work?

What it shows

What it leaves out

Evidence B | Email

Studio reply to Rafa, Tuesday, 11:20 a.m.

“Thanks for your interest, Rafa! Since interns get college credit, it’s totally legal for us not to pay. We’d love for you to start right after finals.”

Look closely: Is credit one factor or the whole test? What does the email skip?

What it shows

What it leaves out

Look at the evidence, continued

Evidence C | Chat

Gia and Rafa, Tuesday lunch

- Gia: Didn’t they pay someone to do the inbox last year?
- Rafa: Yeah, their assistant.
- Gia: And it’s your summer, not theirs. What about your shifts at the shop?

Look closely: Who ran the customer inbox last year? Was that person paid?

What it shows

What it leaves out

What is still missing from the evidence?

Notes

Key idea: the primary beneficiary test

On your own Read the key idea and the code of ethics, then answer the question in the box. About 10 minutes.

A job title does not show how the work is arranged. The **primary beneficiary test** is how the U.S. Department of Labor decides whether an intern at a for-profit company is an employee. It asks whether the intern or the employer mainly benefits from an unpaid internship. An intern who counts as an employee must be paid under the **Fair Labor Standards Act**. The Fair Labor Standards Act is a federal law that sets minimum wage and overtime rules for most workers.

The Department of Labor's Fact Sheet #71 lists seven factors. They include training, links to coursework or **academic credit**, the school calendar and how long the learning lasts. Academic credit is credit toward a degree that a school gives for approved work, such as an internship. Another factor is whether the intern's work adds to paid employees' work or replaces it. The test is flexible, and no single factor decides it.

So the studio's email does not settle the question. Calling a job an internship does not decide it. Neither does college credit, or an intern agreeing to work for no pay. The test also has limits. It applies to for-profit employers, and state rules may differ. To apply the test, you need facts about the duties, training, supervision and hours.

Professional standards

Real source | National Association of Colleges and Employers (NACE)

NACE Principles for Ethical Professional Practice: 4. Comply with laws

"Comply with laws ... associated with local, state, and federal entities"

In plain words: Career offices and employer recruiters who belong to NACE agree to follow federal, state and local laws.

Question: The campus job board lists the internship. What should the career office ask the studio about the seven DOL factors?

Your answer

Before posting, the career office should ask ____, because ____.

Reports that nearly half of U.S. interns were unpaid in 2022 and who can afford to take those jobs.



Explains when an unpaid internship can break wage law, using the 'Black Swan' intern lawsuit.

This image shows a full page of blank, lined paper. It features approximately 20 horizontal blue lines spaced evenly across the page, typical of notebook paper. The lines are thin and light blue, set against a plain white background. There are no margins, text, or other markings on the page.

Sort the evidence

On your own Match each piece of evidence to the claim it supports or challenges, and mark what is still unknown. About 8 minutes.

Test the studio’s claim against the factor list. Which evidence points toward training, which toward a job, and what is still unknown?

Evidence	Claim 1 College credit makes the unpaid internship legal.	Claim 2 The role looks more like a job than training.
1 DOL: credit is one of seven factors, and no single factor decides		
2 The listing: Rafa runs the customer inbox all summer		
3 A paid assistant ran the inbox last year		
4 The role is openly unpaid and offers credit (factors 1 and 3)		

Still open

- Is there a learning plan, and who supervises?

Whose perspective is missing?

Whose view is missing from these documents? What would you ask them?

The view that is missing is _____. I would ask _____.

Practice: choose a response

On your own Choose what Rafa should do next and explain why, then fix the two marked lines. About 6 minutes.

The studio's unpaid internship has Rafa running its customer inbox all summer, the job a paid assistant did last year. The studio says college credit makes it legal. What should Rafa do next?

- ☐ **A** Accept the studio's answer, since college credit settles the question.
- ☐ **B** Ask for the learning plan, supervision, schedule and how the role relates to paid employees' work.
- ☐ **C** Tell the studio that unpaid internships are against the law.

Why I chose it

Improve a draft

A student's first draft

Hi, thanks so much for the offer! I'm really excited about this opportunity and I know it will look great on my résumé. I just wanted to ask **1** if this is legal since it's unpaid? My friend said unpaid internships aren't allowed. Also how many hours is it? **2** I can start whenever you need me. I really want to get into editing and this seems like a good way in. Let me know! Thank you again for thinking of me, Rafa

Rewrite each marked phrase so it says only what the evidence supports.

Rewrite phrase 1

Rewrite phrase 2

College

Your task

On your own Read the steps and fill in the planner boxes before you start your draft. About 15 minutes.

Write a memo to the campus career center about unpaid internship listings on its job board, using the studio’s listing as the example. Add a one-page checklist students can use before they accept an unpaid offer.

Use: Case documents: the studio listing and reply, Gia and Rafa’s conversation and Rafa’s statement. Real sources: the Department of Labor’s Fact Sheet #71, NACE’s principle on complying with laws and NACE’s internship reports (2016 and 2023).

You’ll make: Memo, 300—400 words, plus a one-page checklist

Time: 75 minutes

- 1

Fill in the factor chart: a question for the employer and what the listing says.
- 2

Mark the displacement evidence: a paid assistant ran the inbox last year.
- 3

Write the questions the career center can ask employers before posting a listing.
- 4

Draft the example and questions sections of your memo on the Your draft page.
- 5

Finish a memo of 300 to 400 words on lined paper or in the online workspace.
- 6

Add a one-page checklist students can use before they accept an unpaid offer.



Prefer typing? Scan to open the online workspace.

Training: question for the employer

Credit: what the listing says

Displacement: what the case shows

[illegible][illegible]

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

On your own Write your first draft in the boxes, using your planner from the page before. About 30 minutes.

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This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has rounded corners and a thin black border around the edges.

Check your work

On your own Answer the Check your work questions, mark your level in each rubric row and write one change you made. About 8 minutes.

Does your memo apply the factors to the listing and reply accurately?	☐ Yes ☐ No
Does it flag the displacement evidence?	☐ Yes ☐ No
Does it recommend questions, not legal rulings?	☐ Yes ☐ No
Does your checklist include opportunity cost?	☐ Yes ☐ No

How your work is scored

Mark one box in each row.

Skill	Beginning	Developing	Proficient	Advanced
Evidence	☐ Relies on rumor.	☐ Mentions pay only.	☐ Asks about several factors.	☐ Asks about factors and notes what the credit claim doesn't settle.
Reasoning	☐ Declares legal or illegal.	☐ Asks for a verdict.	☐ Gathers facts before deciding.	☐ Connects each question to a reason it matters.
Audience & purpose	☐ Gives away leverage or accuses.	☐ Polite but vague.	☐ Specific, respectful questions.	☐ Specific questions plus Rafa's own constraints.
Revision	☐ No change.	☐ Tone only.	☐ Replaces rumor with factor-based questions.	☐ Explains how each question helps Rafa decide.

One change I made after feedback

[illegible]

Questions to discuss

On your own Write a short answer to each question, then complete each sentence frame. About 10 minutes.

- 1** What would count as evidence that the promised training is happening?

- 2** Unpaid summers are easier for people who do not need a paycheck. Who might an unpaid internship leave out?

- 3** If Rafa's school grants credit, does that settle whether the studio should pay him? Why or why not?

My take

My claim: ____.

The best evidence is ____, because ____.

Someone who disagrees might say ____.

[illegible]

Talk about this case at home

Case 15: Is Rafa's unpaid internship really a job?

In this case, a college student is offered an unpaid summer internship, and the studio says college credit makes that legal. Your student compared the offer with a federal test and wrote questions to ask before saying yes.

Questions to talk about

- 1 What questions would you ask before accepting an unpaid internship?
- 2 How can someone tell whether a role is mostly learning or mostly work?
- 3 Who can help a student check a job or internship offer?

Nobody needs to share personal stories or private information to talk about this case.



See the case online.