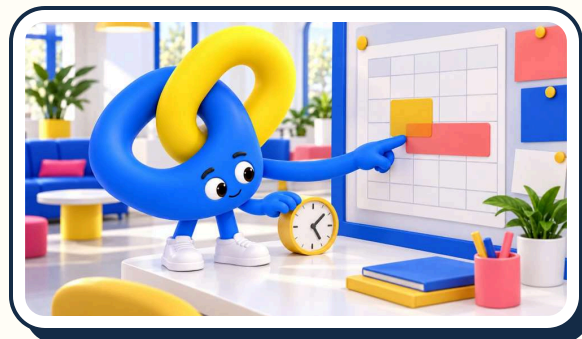


Case 15: Is Rafa's unpaid internship really a job?

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?

[illegible]

Reading passage

Seven factors and a summer

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: Totally legal?

Rafa is 18, a first-year college student who commutes and helps at his family's shop. In April, a studio lists a "Summer Editing Intern (unpaid)" position on the campus job board. The copy is upbeat: a fast-paced studio, great exposure to the industry, college credit available. The duties are narrower. The intern will run the customer inbox all summer and help with client files. Rafa reads the listing twice, looking for the editing, and does not find it.

When he writes to ask, the studio's reply on Tuesday at 11:20 a.m. offers a legal conclusion. Since interns get college credit, it says, it is "totally legal" not to pay him. It also asks him to start right after finals.

Rafa does what the crew has learned to do. He checks. On the train, he finds that college credit is one factor among seven. At lunch with Gia, the facts get sharper. Gia asks whether the studio paid someone to do the inbox last year, and Rafa confirms that its assistant did. Gia counts the cost: shifts at the shop, the commute and a summer without pay. She also catches herself. She almost told him to take it because it would look good, and she realizes that is easy to say when she is not the one giving up the summer. When Rafa asks whether she can tell him it is illegal, she says no. She does not know that. She can tell him which questions the studio has not answered yet.

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

❓ **Stop and think.** Gia says she cannot tell Rafa the internship is illegal. Why is that the more accurate answer?

Reasoning with a multi-factor 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. It asks whether the intern or the employer mainly benefits from an unpaid internship. 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 seven factors include training, links to coursework or **academic credit**, the academic calendar and the length of the learning period. 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 complements paid employees' work or displaces it.

The new skill is applying a legal test factor by factor. It extends Case 12, where you compared fact patterns to a precedent, and Case 11, where you compared two situations on the same terms. Gia's question about last year is a Case 11 comparison. The inbox used to be a paid job. That fact bears directly on displacement.

Laid out factor by factor, the evidence is uneven. Displacement: a paid assistant did this work last year. Academic credit: listed as available, but Rafa's school has not confirmed it. Training and supervision: no information. Calendar and duration: the studio wants him to start after finals and stay all summer, but gives no hours. A careful reader concludes that the studio's claim is unsupported, not that the internship is illegal. The test is flexible, no single factor decides it and the facts that would decide it are missing. The test also has limits. It applies to for-profit employers, and state rules may differ.

Case 11's term **compensation**, all the pay and benefits a worker receives, completes the picture. The offer pays nothing and costs Rafa paid shifts. His email will ask for the missing facts in writing, politely: who trains him, what a normal week looks like, the weekly hours and whether this is the assistant's old job.

❓ **Stop and think.** Which factor has the strongest evidence, and which has none? What does that imbalance mean?

The courts, the data and the profession

The primary beneficiary test grew out of litigation. Two unpaid interns on the 2010 film *Black Swan* sued Fox Searchlight. The appeals court opinion lists their tasks, which included answering phones, taking lunch orders, making coffee, photocopying and filing (U.S. Court of Appeals for the Second Circuit, 2016). In 2015, the court held that the question is who is the primary beneficiary, and that is the test the Labor Department uses now (LAist, July 2, 2015; U.S.

The courts, the data and the profession, continued

Department of Labor, Fact Sheet #71, updated January 2018).

The stakes are about access as well as law. PBS NewsHour reported that nearly half of U.S. interns were unpaid in 2022 (PBS NewsHour, August 26, 2023). NACE survey data show inequity in who gets paid internships (National Association of Colleges and Employers, August 8, 2023). NACE’s own ethics principles ask members to comply with “local, state, and federal” laws (NACE Principles for Ethical Professional Practice, 2025).

 **Stop and think.** If Rafa’s school grants credit, does that settle whether the studio should pay him? Why or why not?

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 | 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 (NACE) | 2025
NACE Principles for Ethical Professional Practice

Notes

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.

[illegible]

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

Grades 11–12

Your task

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

Write Rafa a decision memo weighing the offer's benefits, costs and legal questions.

Use: All case sources including DOL Fact Sheet 71.

You'll make: Memo, 400–500 words

Time: 60 minutes

- 1 Reread Evidence A, B and C. Note what each says about work, learning and cost.
- 2 List the benefits of the offer in the planner.
- 3 Set up the cost of lost paid shifts at the shop, with blanks for unknown numbers.
- 4 Note one limit of the federal test in the planner.
- 5 Draft the benefits, costs and limits sections of your memo on the Your draft page.
- 6 Finish a memo of 400 to 500 words that leaves the choice with Rafa.



Prefer typing? Scan to open the online workspace.

Benefits of the offer

The cost of an unpaid summer

Lost pay = ___ shifts a week × ___ hours × \$___ an hour × ___ weeks

One limit of the federal test

[illegible]

Your draft

On your own Write your first draft in the boxes, using your planner from the page before. About 25 minutes.

First draft: the offer and its benefits

First draft: costs and legal questions

First draft: limits and the choice

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 6 minutes.

Does your memo apply the factors accurately?	☐ Yes ☐ No
Does it set up the cost of lost paid hours?	☐ Yes ☐ No
Does it name the limits of the federal test?	☐ Yes ☐ No
Does it leave the choice with Rafa?	☐ 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

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

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 ____.

I would change my mind if ____.

Notes

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.