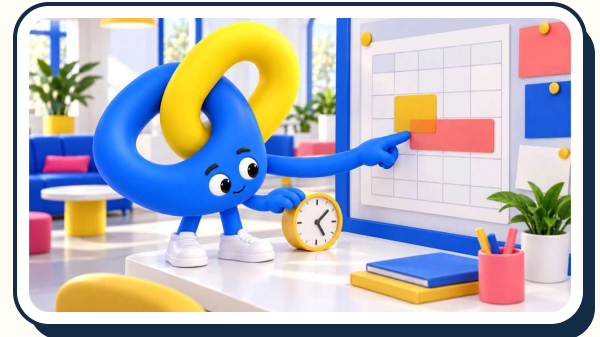


Case 15: Is Rafa's unpaid internship really a job?

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 8 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 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 are no margins, text, or other markings on the paper.

Reading passage

Looking for the editing

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 5 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: An internship with a catch

Rafa is 18. He is in his first year of college, commutes to class and helps at his family's shop. In April, a studio posts a listing on the campus job board: "Summer Editing Intern (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 his message. "Since interns get college credit, it's totally legal for us not to pay," the email says. The studio wants him to start right after finals.

At lunch, Rafa talks it over with Gia. She asks a sharp question: didn't the studio pay someone to run the inbox last year? Yes, Rafa says. Their assistant did. Taking the internship would also cost Rafa paid shifts at the shop.

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

? Stop and think. Why does Rafa read the listing twice?

A test with seven parts

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 who mainly benefits from the internship, the intern or the company. An intern who counts as an employee must be paid under the **Fair Labor Standards Act**. That is a federal law that sets minimum wage and overtime rules for most workers.

A test with seven parts, continued

The test has 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 asks whether the intern’s work adds to paid workers’ work or replaces it. No single factor decides the test.

So the studio’s email does not settle anything. Rafa put it well: “Credit is one factor out of seven. So that’s one. What about the other six?”

In Case 12, you compared facts to a court case. Here, you compare facts to a test, one factor at a time. Some facts point one way. The main job is the inbox, and a paid assistant did it last year. Other facts are missing. Who trains Rafa? How many hours a week? In Case 11, you learned that **compensation** is all the pay and benefits a worker receives. Here, the offer includes none.

Gia almost told Rafa to take it because it would look good. Then she stopped. “Easy for me to say,” she admits. She is not the one giving up a summer. She leaves the decision to him.

? **Stop and think.** Why doesn’t college credit settle whether Rafa should be paid?

Real interns who sued

Two unpaid interns on the 2010 film Black Swan sued Fox Searchlight. They said they should have been paid. In 2015, a federal appeals court said the question is who is the primary beneficiary of the internship (LAist, July 2, 2015). That is the test used today.

? **Stop and think.** What questions should Rafa ask the studio before he decides?

Sources

Real source | LAist (AirTalk) | July 2, 2015
Appeals court reverses ‘Black Swan’ interns’ victory over Fox

Notes

Look at the evidence

On your own Read each document, then fill in both boxes under it. About 12 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

One question I still have

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

One question I still have

What is still missing from the evidence?

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.

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 8 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

The career office should ask ____.

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 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 no margins, text, or other markings on the paper.

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 10 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 8 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 6—8

Your task

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

Sort the internship's daily tasks into "learning" and "working," then tell a partner whether it looks more like school or a job.

Use: The listing and a kid-friendly summary of the seven factors.

You'll make: Sorted chart plus 3—4 sentences

Time: 45 minutes

- 1 Underline each task Rafa would do in the listing in Evidence A.
- 2 Sort each task into the Learning box or the Working box.
- 3 Count the tasks in each box and circle the bigger box.
- 4 Tell a partner whether the offer looks more like school or a job.
- 5 Write 3 or 4 sentences in the Your draft box, ending with one question for the studio.

Show it your way

Write it: Write 3—4 sentences with the frame "Most of the tasks are __, so __."

Say it: Tell a partner whether the internship looks more like school or a job, using two task cards as your proof.

Show it: Sort the task cards into two columns, learning and working, and star the task Rafa would do most.



Prefer typing? Scan to open the online workspace.

Your task, continued

Learning

Working

Your draft

Most of the tasks are ____, so ____.

Notes

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.

Did you sort every task from the listing?	☐ Yes ☐ No
Do your sentences give a reason from the evidence?	☐ Yes ☐ No
Do you end with a question Rafa could ask?	☐ Yes ☐ No
Did you avoid saying the internship is illegal?	☐ 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

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

My take

I think Rafa should ___ because ___.

The evidence that changed my first guess is ___.

One question I still have is ___.

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.