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 6 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."

Your first guess

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

My first guess is ___, because ___.

Notes

Reading passage

An internship or an unpaid job?

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: The work behind the title

Rafa, 18, is a first-year commuter who helps at his family's shop after class. In April, a listing goes up on the campus job board: "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." Rafa reads it twice. The title says editing. The duties say inbox.

He writes to the studio. On Tuesday at 11:20 a.m., the reply arrives: "Since interns get college credit, it's totally legal for us not to pay. We'd love for you to start right after finals." Rafa pastes it into the group chat. Gia asks whether that is how it works. Rafa says he does not know yet and starts looking it up on the train.

At lunch, Gia, who fits café shifts around her own classes, asks the question that changes the conversation. Didn't the studio pay someone to run the inbox last year? Rafa says their assistant did it. Gia also counts what the summer would cost him: shifts at the shop, the commute and a whole summer with no pay. "Exposure," she points out, does not cover the train fare.

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

Stop and think. What does the gap between the job title and the duties tell Rafa?

Applying a test factor by factor

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. If the intern is really an employee, the **Fair Labor Standards Act** applies. That is a federal law that sets minimum wage and overtime rules for most workers.

The Labor Department 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 asks whether the intern's work adds to paid employees' work or replaces it. The test is flexible, and no single factor decides it. Calling a position an internship does not decide it. Neither does college credit, or an intern agreeing to no pay.

The new skill is applying a written test one factor at a time. It builds on Case 12, where you set fact patterns beside a precedent. Match each factor to a fact, and mark what is missing. On replacing paid work, the evidence is strong: a paid assistant ran the inbox last year. On academic credit, the listing says credit is "available," but nobody knows yet whether Rafa's school will grant it. On training and supervision, there are no facts at all. Rafa's own summary is exact: credit is one factor out of seven, so what about the other six?

Case 11 gave you the word **compensation**, all the pay and benefits a worker receives. Here, the compensation is zero, and the cost to Rafa is real. His email to the studio can ask for the missing facts in writing: who trains him, what a normal week looks like, how many hours and whether this is the job the assistant did last year.

Stop and think. Which factor does the paid assistant's job speak to, and which way does it point?

The case that set the test

Two unpaid interns on the 2010 film Black Swan sued Fox Searchlight, arguing that they should have been paid as employees. In 2015, a federal appeals court adopted the question of who is the primary beneficiary (LAist, July 2, 2015). The Department of Labor's Fact Sheet #71 now lists the seven factors (U.S. Department of Labor, updated January 2018).

Unpaid internships are still common. PBS NewsHour reported that nearly half of U.S. interns were unpaid in 2022 and asked who can afford to take those jobs (PBS NewsHour, August 26, 2023).

Stop and think. Unpaid summers are easier for people who do not need a paycheck. Who might an unpaid internship leave out?

Sources

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

Notes

Look at the evidence

On your own Read each document, then fill in both boxes under it. About 10 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 ___.

In the news

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

Why unpaid internships still exist despite hardships for young workers

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

Real source | NPR | May 18, 2013

Internships: Low-Paid, Unpaid Or Just Plain Illegal?

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

Notes

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 9—10

Your task

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

Turn the seven DOL factors into an internship questions sheet and fill it in with the studio's answers.

Use: Listing, studio answers and DOL Fact Sheet 71.

You'll make: Questions sheet plus 150-word summary

Time: 50 minutes

1. Read the seven factors on Fact Sheet #71 from the Department of Labor.
2. Write one question each about training, credit and paid work in the planner.
3. Write questions for the other four factors on lined paper.
4. Mark each answer the studio gave as supported or unknown.
5. Write a summary of about 150 words on the Your draft page.
6. Check that your summary leaves out any legal verdict.

Prefer typing? Scan to open the online workspace.

Training question

The studio's answer

Credit question

The studio's answer

Paid-work question

The studio's answer

Your draft

On your own Write your first draft in the boxes, using your planner from the page before. About 20 minutes.

Your summary, about 150 words

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 each question match one factor?	☐ Yes	☐ No
Did you mark each answer as supported or unknown?	☐ Yes	☐ No
Does your summary explain why no single factor decides the test?	☐ Yes	☐ No
Did you leave out a legal verdict?	☐ 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.

Check your work, continued

One change I made after feedback

I changed ___ because ___.

Notes

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 ___.

My take, continued

Someone who disagrees might say ___.

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.

See the case online.

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.