

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

Providing for the employability skills necessary to attain and maintain employment throughout life is an essential part of transition planning for students, particularly those with disabilities. Individuals with Disabilities Education Act (§ 300.43) mandates that all students with Individual Education Programs (IEPs) have appropriate transition planning to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation based on an individual's needs, strengths, preferences and interests. To the maximum extent possible, schools should work collaboratively with appropriate service agencies (e.g. Division of Vocational Rehabilitation, Workforce centers, etc.) and community resources to provide work-based learning opportunities for students with disabilities to improve student success.

Volunteer work, internships, and unpaid work experiences can be effective strategies for individuals with disabilities looking to gain work-related experience and exposure to employment. However, such activities must be undertaken carefully, and with a clear understanding of the purpose and intended outcomes. All parties must understand associated legal requirements and responsibilities.

Lack of awareness of these parameters can result in possible action by the federal or state labor department against both the service provider and the volunteer organization or business where the individual is participating in activities. Improper use of unpaid work experiences may result in legal and financial penalties for those involved, including payment of back wages.

Understanding What Is Allowed

- Volunteering – Volunteering refers to unpaid activities to benefit a non-profit agency or organization. Activities are varied and might include making phone calls for a political campaign, serving as an assistant coach in a sports league, stocking shelves at a food bank, serving on a board or in an advisory group, or working on a clothing drive for a faith-based organization.
- Internships – Internships are temporary positions to provide job training, are generally only available in conjunction with formal education programs, may take place in for-profit or non-profit organizations, and may be paid or unpaid. This publication focuses unpaid internships.
- Unpaid work experiences – Under certain circumstances, individuals with disabilities are permitted to work for a short period at any type of business without pay for job exploration, assessment, and training purposes. This is permitted only within very specific parameters.

Volunteering

Volunteering may be a step towards employment. It can be a great way of exploring interests, developing skills, gaining experience, building a resume, and making connections that lead to future paid jobs. At the same time, volunteering should not be a long-term substitute for paid employment.

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

Where Individuals Can Volunteer

Individuals may volunteer only at non-profit organizations. Volunteering is not permitted at for-profit, private sector businesses. Per the United States Department of Labor (USDOL), individuals may volunteer or donate their services for “public service, religious or humanitarian objectives” without expectation or receipt of payment.

Additional factors help determine if an activity meets the definition of volunteering:

- The activity is generally part-time.
- The activities are the kind typically associated with volunteer work rather than paid employment.
- Services are offered freely and without pressure or coercion.
- Regular employees have not been displaced to accommodate the volunteer.
- The individual does not receive or expect to receive any benefit (beyond the experience itself) from the organization where he or she is volunteering. Volunteers may receive reimbursement for expenses, discounts on services, refreshments, and small appreciation gifts, etc. They may also be paid a nominal fee, but it cannot be a substitute for paid compensation or based on productivity. In general, organizations should be cautious in providing any sort of payments beyond expense reimbursement to volunteers.

Parent/Guardian Consent Requirements

An individual with a disability must be legally competent to freely volunteer his or her services. Per USDOL, individuals under 18, and those over 18 who are not their own legal guardian, cannot volunteer without the consent of their parent or legal guardian.

Unpaid Internships

Unpaid internships are distinct from volunteering, and are intended to allow an individual to gain job-related experience. Per USDOL, individuals may participate in unpaid internships at both for-profit and non-profit organizations, if all seven of the following criteria are met:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

See www.dol.gov/whd/regs/compliance/whdfs71.htm for further details.

Nonprofit organizations can pay stipends to interns as volunteers, but the amount of the stipend cannot exceed 20% of what an individual would have been paid for the same job.

Unpaid Work Experiences

Under USDOL provisions, individuals with disabilities can spend a limited number of hours engaged in unpaid work experiences at an employer's place of business for job exploration, assessment, and training (e.g. situational assessments). Per the USDOL, these types of unpaid work experiences are permitted when all seven of the following criteria are met:

1. The individual is a person with physical and/or mental disability for whom competitive employment at or above the minimum wage level is not immediately obtainable, and who will need intensive ongoing support to succeed in employment.
2. The time spent at the place of business is for vocational exploration, assessment, or training. It must be conducted under the general supervision of staff from a rehabilitation organization (community rehabilitation provider, public vocational rehabilitation, or other public disability agency), or in the case of a student with a disability, under the supervision of public school personnel.
3. Employment in the community must be a specific goal of the individual's service plan, specifying the need for exploration, assessment, or training activities. This must be written into the Individual Education Program (IEP) or the Individualized Plan for Employment (IPE) or done as part of Pre-Employment Transition Services under the Workforce Innovation and Opportunity Act.
4. The activities of the individual with a disability cannot result in an "immediate advantage" to the business. "Immediate advantage" includes the following, all of which are not permitted.
 - Displacement of regular employees;
 - Filling of a vacant position by the participating individual with a disability instead of regular employees;
 - Relieving regular employees of assigned duties;
 - The participating individual performs services that, although not ordinarily performed by employees, are of clear benefit to the business;
 - The individual is under direct supervision of employees of the business, rather than a rehabilitation or school professional;
 - The activities are conducted to accommodate the labor needs of the business rather than according to the requirements of the individual's service plan; or
 - The individual's service plan does not specifically limit the time spent at any one employer site or in any specific job classification (i.e., the planning document needs to

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

be specific regarding intent of the person's time at the employer site in terms of duties and how long they spend there).

5. Although the number of hours does not exclusively determine whether an unpaid work experience is permitted, per the USDOL, as a general rule, unpaid work experience is permissible if the following hour limitations are not exceeded.
 - Vocational exploration: 5 hours per job experienced
 - Vocational assessment: 90 hours per job experienced
 - Vocational training: 120 hours per job experienced

In the case of students, these limitations apply during any one school year.

6. The participating individual with a disability is not entitled to employment after the unpaid work experience is completed. However, if the individual becomes an employee at that business, he or she cannot be considered a trainee (i.e., unpaid for up to 120 hours) at that particular employer unless working in a different, clearly distinguishable occupation.
7. Upon request, documentation will be provided to the USDOL Wage and Hour Division indicating that the individual is enrolled in a community-based placement program, that this enrollment is voluntary, and that there is no expectation of payment.

Further details of unpaid work requirements are available under Section 64c08 at:

www.dol.gov/whd/FOH/FOH_Ch64.pdf

Considerations in Unpaid Work Experiences

There are a number of practical considerations in the use of unpaid job experiences under these USDOL guidelines:

- The use of unpaid work experiences must connect clearly with the goals and objectives of an individual's service plan and there should be a particular rationale why the specific activities at that particular place of business are occurring, documented within the service plan. Simply having an individual participate in unpaid work experiences to "stay busy", or because it is a standard part of the "employment program" for everyone is not acceptable.
- The IEP and/or IPE must state the specific intent and purpose of the individual's time at the employer site in terms of the duties and number of hours that will be spent there.
- On the surface, some of the factors in terms of "immediate advantage" may seem to be a challenge to comply with. For example, if an individual is doing filing in an office environment as part of an assessment, the business is benefiting from having some filing completed. To address any concerns in this regard, be absolutely clear that the purpose of the activity is for exploration, assessment, or training, that whatever benefit there is to the business is incidental and immaterial, and ensure compliance with all other requirements (supervision by rehabilitation or school personnel, limitations on hours, no displacement of business personnel, documentation, etc.).
- A group of students or adults performing job duties for no pay at a business on an ongoing basis is generally not permitted under these guidelines, unless each individual's service plan specifically states how this unpaid work experience is connected to the

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

individual's employment goals and specifies the number of hours of the unpaid work experience. All other requirements within the guidelines must also be complied with.

Authorization for Unpaid Community Work Experiences checklist for educators can be located at: https://www.cde.state.co.us/cdesped/unpaidwork_authorizationchecklist

The USDOL does not define the terms "vocational exploration," "vocational assessment," or "vocational training," although these terms are defined in the rehabilitation literature. The following are practical applications of these terms:

- Vocational exploration: Identifying types of occupations in which an individual may be interested.
- Vocational assessment: Evaluating an individual's overall employment skills and interest/suitability in specific occupations.
- Vocational training: Developing an individual's skills for a specific occupation, with the expectation that he or she will work in that occupation.

Worker's compensation & General Liability

Employers may have concerns over liability during the course of unpaid work experiences in the event an individual is injured or harms a piece of equipment. The USDOL has been clear that an employment relationship does not exist during an unpaid work experience. Therefore, the individual would not be covered under the workers compensation coverage of that entity. Instead, individuals placed with an employer for the purpose of job exploration, assessment, or training may be eligible for worker's compensation coverage through the rehabilitation agency or school. The agency or school may need to provide evidence of insurance coverage.

It is highly recommended that there be clear documentation in the individual's file regarding each unpaid work experience. This should indicate the purpose of the experience (i.e., job exploration, assessment, or training), location, tasks to be performed, number of hours worked, and summary and analysis of the outcomes. This documentation helps to guide the career exploration and placement process, while supporting the USDOL requirements for unpaid work experiences (noted above) are met and ensuring compliance.

By establishing a mechanism to pay wages (minimum wage or higher) to students participating in work experiences, any concerns associated with unpaid work experiences can be eliminated. An organization may have existing funds available, or could potentially get funding from community foundations or civic groups. It important to recognize an employment relationship is established when an organization begins paying wages and the payer of the wages would be responsible for all associated employment requirements, including worker's compensation insurance.

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

Job Assessment

When appropriate, the use of assessments provide an opportunity to help an individual select a suitable employment choice and/or identify vocational rehabilitation needs and services. Job assessments evaluate the individual's ability to perform the tasks of the position. The individual may perform job duties for a few hours, a day, or even a couple of days. When conducting an assessment, it is important that the student and the employer understand the purpose.

Job assessment can be an effective strategy to assist the individual in exploring key factors including interests, capacities, employment options and settings, and to help the individual clarify the employment outcome and the services needed to succeed.

General Guidelines Regarding Volunteering, Internships, and Unpaid Work Experiences

Volunteering, internships, and unpaid work experience can be part of efforts by an individual with disabilities to develop skills, abilities, and experience that allow them to succeed in paid employment. The following are suggested guidelines for service providers in supporting individuals in these types of activities:

1. Make sure that all activities are based on an individual's skills, preferences, and interests, not simply to provide them an activity to keep busy.
2. Be clear about the type of activity and distinguish between volunteer activity, internship, and unpaid exploration, assessment, or training.
3. Have a clear rationale for why these specific types of activities are being undertaken, and how they support an individual's goals and plans.
4. Use internships and unpaid exploration, assessment, and training only as necessary and for specific reasons, with careful thought about how these will lead to paid employment. Do not spend time and resources on these types of activities if the individual can successfully obtain employment without them.
5. Reinforce to all participants that volunteering is not an alternative to paid employment, but rather an activity for the individual's personal enjoyment and fulfillment. It may also be an avenue for building skills and connections that may lead to paid employment.
6. Know the laws and regulations that apply to the particular situation.
7. Educate and communicate with individuals and families about participation in volunteering, internships, and unpaid work experiences, the differences between them, and their rights and responsibilities regarding these activities.

Resources

Resources from the US Department of Labor www.dol.gov/whd/

- Wage and Hour Division: www.dol.gov/whd/america2.htm
- Volunteer guidelines: www.dol.gov/elaws/esa/flsa/docs/volunteers.asp
- Trainee guidelines: www.dol.gov/elaws/esa/flsa/docs/trainees.asp
- Internship fact sheet: www.dol.gov/whd/regs/compliance/whdfs71.htm

VOLUNTEERING, INTERNSHIPS AND UNPAID WORK EXPERIENCES: LEGAL AND PRACTICAL GUIDELINES

- Guidelines on unpaid work exploration, assessment, and training for people with disabilities: www.dol.gov/whd/FOH/FOH_Ch64.pdf
- Office of Disability Employment Policy <https://www.dol.gov/odep/>

Colorado Department of Labor and Employment <https://www.colorado.gov/cdle>

- Laws, Regulations and Guidance: <https://www.colorado.gov/pacific/cdle/laws-regulations-guidance>

Note: The information in this publication is based on interpretation of US Department of Labor laws, regulations, and guidelines. It should not be considered as official legal guidance.

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