

Definitions: Employee, Volunteer, Intern, or Independent Contractor in context of Employment vs. Unauthorized Employment

Term	Definitions	Legal
Employer	<p>“Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.</p>	FLSA § 3(d)
Employee	<p>DOL definition:</p> <p>(1) Except as provided in paragraphs (2),(3), and (4), the term “employee” means any individual employed by an employer....</p> <p>(2) In the case of an individual employed by a public agency, such term means -</p> <p style="padding-left: 40px;">(A) any individual employed by the Government of the United States - (i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code), (ii) in any executive agency (as defined in section 105 of such title), (iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service, (iv) in a non-appropriated fund instrumentality under the jurisdiction of the Armed Forces, or (v) in the Library of Congress;</p> <p style="padding-left: 40px;">(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and</p> <p style="padding-left: 40px;">(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual - (i) who is not subject to the civil service laws of the State, political subdivision or agency which employs him; and (ii) who - (I) holds a public elective office of that State, political subdivision, or agency, (II) is selected by the holder of such an office to be a member of his personal staff, (III) is appointed by such an officeholder to serve on a policy making level, (IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or (V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.</p> <p>(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer’s immediate family.</p> <p>CIS definition:</p> <p>An individual who provides services or labor for an employer for wages or other remuneration.</p>	FLSA § 3(e)
Employ	<p>“Employ” includes to suffer or permit to work.</p>	FLSA § 3 (g)

Unauthorized Employment	<p>CASE LAW INTERPRETATIONS OF UNAUTHORIZED EMPLOYMENT UNDER INA § 245(C):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Any activity in which remuneration is received by an individual for services rendered in the U.S., or <input type="checkbox"/> volunteer activities if the individual is in a position normally occupied by a paid worker 	Matter of Hall, 18 I&N Dec. 203 (BIA 1982)
Volunteer	<p>(A) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours. Individuals performing hours of service for such a public agency will be considered volunteers for the time so spent and not subject to sections 6, 7, and 11 of the FLSA when such hours of service are performed in accord with sections 3(e)(4)(A) and (B) of the FLSA and the guidelines in this subpart.</p> <p>(B) Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but expressed its wish to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to “volunteer” their services.</p> <p>(C) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.</p> <p>(D) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.</p>	<p>29C.F.R.§553.101</p> <p>Other sources of guidance: FLSA § 3(e)(4)(A)</p> <p>Wage & Hour Opinion letters</p>
Intern	<p>NECESSARY ELEMENTS OF INTERN PROGRAMS</p> <ol style="list-style-type: none"> 1. Training is similar to that which would be given at a school; 2. Training is for the benefit of the trainee; 3. trainee does not displace regular employees, but works under close observation; 4. employer derives no immediate advantage from the activities of the trainee and on occasion, the employer’s operations may actually be impeded; 5. trainees are not necessarily entitled to a job at the completion of the training period; and 6. Employer and trainee understand that trainees are not entitled to wages for the time spent in training. 	<p>Walling v. Portland Terminal Co., 330 U.S. 148 (1947)</p> <p>Wage & Hour Opinion Letters</p>
Independent Contractor	<p>THERE IS A 20-POINT TEST FOR DETERMINING STATUS AS AN INDEPENDENT CONTRACTOR</p> <ol style="list-style-type: none"> 1. Does university tell individual when, where, and how work is to be performed? 2. Does university train the worker? 3. Are services provided integral to the university’s business operations? 4. Must the services be provided by the individual? 5. Does the university hire, supervise and pay the individual’s assistants? 6. Is there an on-going relationship between the university and the individual? 7. Can the individual set his/her own work hours and schedule? 8. Is the individual providing his/her services on essentially a full-time basis for the company? 9. Is the work performed on university premises? 10. Does the university set the order/sequence of services provided? 11. Does the individual provide reports to the university? 	Common law understanding as applied by IRS and gov’t

12. If the individual paid by the hour, week, or month?
13. Can the university discharge the individual at will?
14. Can the individual stop working for the university without incurring liability to the university?
15. Does the university pay individual's travel or business expenses?
16. Does individual furnish his/her own equipment, tools, and materials?
17. Has the individual invested in his/her own facilities?
18. Does the individual profit/lose money as result of his/her services?
19. Does individual provide services for more than one entity at a time?
20. Are the individual's services available to the general public?

Unlike the internship test, each of these questions does not need to be answered "yes: for a person to be considered an independent contractor. Questions 1-15 explore the relationship between the two parties; a yes to several of these may indicate individual is really more of an employee. Questions 16 - 20 explore the individuals standing as a separate business. Answering yes to these imply the individual is more of a legitimate independent contractor.