

SENATE BILL REPORT

SB 5327

As of January 19, 2023

Title: An act relating to paying interns.

Brief Description: Concerning paying interns.

Sponsors: Senators Keiser, Saldaña, Nobles, Wilson, C., Conway, Lias, Hasegawa, Hunt, Kuderer, Lovick, Nguyen, Randall, Stanford and Valdez.

Brief History:

Committee Activity: Labor & Commerce: 1/23/23.

Brief Summary of Bill

- Requires any state or local governmental body or agency, or educational, charitable, or nonprofit organization receiving public funds who provides an internship, to pay the intern at least the state minimum wage for the hours of the internship.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Minimum Wage Act. The Minimum Wage Act (MWA) establishes a minimum wage which must be paid to all employees. Employee includes any individual employed by an employer with certain exemptions. Some of the categories of exempt employees include:

- agricultural employees;
- individuals employed in casual labor in or about a private home;
- individuals employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salespersons;
- volunteers for educational, charitable, religious, state or local governmental body or agency, or nonprofit organization; and

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- individuals employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services.

Employees who are covered under the MWA must be provided all its protections, including minimum wage, overtime, and paid sick leave.

Interns. An internship is work-related learning for individuals who want hands-on experience in an occupation. The U.S. Department of Labor has published a test under the federal Fair Labor Standards Act (FLSA) to determine if interns and students are required to be compensated for their work. The test is based on court decisions. The courts have used a primary beneficiary test. The test examines the economic reality of the intern-employer relationship to determine which party is the primary beneficiary of the relationship. The courts have identified seven factors as part of the test.

The definition of “employ” is similar under state and federal laws. The Department of Labor & Industries (L&I) looks to the application of the FLSA for guidance when determining whether interns are employees under the MWA. The factors L&I uses are similar to those used by the U.S. Department of Labor. The following factors are weighed and balanced together in making the determination:

- the intern and employer understand there is no expectation of compensation, because any promise of compensation, stated expressly or implied, suggests that the intern is an employee;
- the internship provides trainings that would be similar to an educational environment;
- the internship is connected to the intern’s formal education program, such as integrating the job experience with coursework or academic credits;
- the internship accommodates the intern’s academic commitments by corresponding to the academic calendar;
- the intern receives beneficial learning throughout the duration of their internship;
- the intern’s work complements, instead of displaces, the work of paid employees while providing significant educational benefits to the intern; and
- the intern and employer understand the intern is not entitled to a paid job at end of the internship.

No single factor answers the question of whether an intern is an employee. Rather, the test examines whether the intern or the employer is the primary beneficiary of the relationship.

Summary of Bill: Any state or local governmental body or agency, or educational, charitable, or nonprofit organization receiving public funds who provides an internship must pay to the intern wages at a rate not less than the amount established in the MWA for the hours of the internship. The requirement to pay the minimum wage applies whether or not the intern may earn academic credit for the internship.

The enforcement provisions of the Wage Payment Act and certain provisions of the MWA

apply to interns.

Intern means a person who is:

- enrolled in an in-state or out-of-state institution of higher education;
- participating in an internship to gain job experience or clinical or other hands-on training, that is for the intern's primary benefit; and
- not displacing employees.

Intern does not include a farm intern under a farm internship program. An internship is a planned, structured engagement of limited duration for the intern to gain job experience or clinical or other hands-on training with a state or local governmental body or agency, or an educational, charitable, or nonprofit organization receiving public funds.

L&I may adopt rules to implement the act.

Appropriation: None.

Fiscal Note: Requested on January 13, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.