



## Maryland Farm Internships and Labor Laws



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**M**any farms across Maryland use interns to lighten the overall farm workload and help young people gain practical farming knowledge. Although interns can be a welcome addition to a farm’s workforce, farm employers need to be aware of how to properly compensate interns and the legal consequences of adding them to the payroll. Can interns work for free or be provided a small stipend? Must they be paid minimum wage? What about an unpaid internship if meals and housing are provided? Farmers who hire and/or house interns may need to make changes in order to comply with Federal and State laws that protect workers. Farmers should carefully consider applicable laws before hiring interns and consult an insurance agent and attorney to reduce exposure to liability. There have been

recent nationwide legal crackdowns on the compensation of interns, and this is an area of the law which can be costly to ignore or misunderstand.

### **Intern and Apprenticeship Programs Must Comply With Federal and State Law**

The U.S. Department of Labor (DOL) has specific definitions of both internships and apprenticeships which are not interchangeable. An apprenticeship program must be created and managed in compliance with State and Federal law. The Maryland Department of Labor and Licensing (DLLR) administers the State apprenticeship program and requires registration of apprenticeship programs. Although rarely implemented, certain agricultural occupations such as farm

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equipment mechanics, farm advisors, farm workers, and horse trainers qualify as occupations that may have apprenticeship programs. Apprenticeships combine paid, on-the-job training and related technical instruction. Farm employers interested in having apprentices should contact the DLLR.

As for the classification of interns, the factors of the “primary beneficiary test” below are used to determine if the intern is exempt from minimum wage.<sup>1</sup>

1. The employer and the intern understand that the intern is not entitled to wages for the work performed.
2. The training provided is similar to that which is given in an educational environment, including clinical and hands-on training.
3. The intern does not displace paid employees.
4. The duration of the internship is limited to the time the intern receives beneficial learning.
5. The work is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
6. The work accommodates the intern's academic commitments and academic calendar.
7. The intern is not necessarily entitled to a job at the conclusion of the internship.

The “primary beneficiary test” is inherently flexible. Whether an intern is an employee under the FLSA necessarily depends on the unique circumstances of each case. The factors are weighed all together to examine the “economic reality” of the intern-employer relationship and no single factor can be used to conclude that the intern is not an employee entitled to the minimum wage. In cases where a worker may not qualify as an intern, Maryland law allows students in DLLR approved work-study programs to be paid less than the minimum wage.<sup>2</sup> A farm employer should consult legal counsel or the DLLR before deciding to pay an intern anything less than the minimum wage.

### **The Federal Fair Labor Standards Act (FLSA) and the Maryland Wage and Hour Law Dictate the Amount Farm Employers Must Pay Maryland Farm Workers**

Although the Fair Labor Standards Act (FLSA) establishes the Federal minimum wage, some states, including Maryland, require a higher minimum wage. Unless an exemption applies, the higher State minimum wage is the wage that must be paid to all employees. State minimum wage rates typically increase over time and employers should check annually to ensure they are paying the correct wage.<sup>3</sup> Workers cannot waive their right to be paid minimum wage. It is not a viable defense for an agricultural employer to claim an intern knew and accepted an unpaid or under-paid internship. In addition, farm employers at for-profit farms should use caution in allowing any person to work on a volunteer basis. The DOL, following judicial guidance, has found employees may not serve as unpaid or underpaid volunteers in for-profit private sector businesses.

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There is an important Federal and State exemption for paying minimum wage to farm workers called the “500 Man-Day Exemption.”<sup>4</sup> This exemption allows small farms to pay interns and other employees less than minimum wage if the agricultural employer did not use more than 500 man-days of labor in any calendar quarter of the previous year.<sup>5</sup> A “man-day” is defined as any day





<sup>4</sup> 29 U.S.C. § 213(a)(6)(A).

<sup>5</sup> Md. Code Ann., Lab. & Empl. §3-403(12), 29 U.S.C. § 203(u).

<sup>6</sup> 29 U.S.C. §203(u).

<sup>7</sup> 29 C.F.R. §780.105(b).

<sup>8</sup> 29 C.F.R. §780.105(c).

<sup>9</sup> 29 C.F.R. §780.11.

<sup>10</sup> Md. Code Ann., Lab. & Empl. §3-403(6); 29 U.S.C. §213(a)(6)(B).

<sup>11</sup> Md. Code Ann., Lab. & Empl. §3-403(13); 29 U.S.C. §213(a)(6)(E).

<sup>12</sup> Md. Code Ann., Lab. & Empl. §3-403(14); 29 U.S.C. §213(a)(6)(C).

<sup>13</sup> Md. Code Ann., Lab. & Empl. §3-403(14); 29 U.S.C. §213(a)(6)(D).

<sup>14</sup> Md. Code Ann., Lab. & Empl. §3-403(9).

<sup>15</sup> Md. Code Ann., Lab. & Empl. §3-413(d).

<sup>16</sup> Md. Code Ann., Lab. & Empl. §3-420(c).

<sup>17</sup> Md. Code Regs. 09.12.41.18.A.

<sup>18</sup> Md. Code Regs. 09.12.41.18.B.1.

<sup>19</sup> Md. Code Regs. 09.12.41.18.B.2.

<sup>20</sup> Md. Code Regs. 09.12.41.18.F.

<sup>21</sup> 29 U.S.C §1821 (a); 29 U.S.C. §1831(a)(1).

<sup>22</sup> 29 U.S.C §1821 (d); 29 U.S.C. §1831(c).

<sup>23</sup> Md. Code Ann., Lab. & Empl. §9-210.

<sup>24</sup> Md. Code Ann., Lab & Empl. §9-407(b)(2).

<sup>25</sup> Md. Code Ann., Lab. & Empl. §8-207(c).

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The Agriculture Law Education Initiative (ALEI) is a collaboration of the University of Maryland Francis King Carey School of Law at the University of Maryland, Baltimore ([UMB](#)); the College of Agriculture & Natural Resources at the University of Maryland, College Park ([UMCP](#)); and the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore ([UMES](#)). ALEI is an initiative of the University of Maryland: *MPowering the State*, a strategic alliance between UMB and UMCP created in 2012 to significantly expand research, business development, and student opportunities at both universities.

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