

# The Truth About Internships in New York: How to Tell if Yours is Legit

By [Vicki Salemi](#)

Internships are becoming a hot topic in the news lately as more and more lawsuits are emerging from interns filing claims against former employers. A judge recently ruled in favor of two unpaid interns who filed a lawsuit against Fox Searchlight during their work on *Black Swan*. The judge declared the benefits the interns received were "the results of simply having worked as any other employee works, not of internships designed to be uniquely educational to the interns and of little utility to the employer."

Essentially, the ruling indicated Fox violated labor laws. Subsequently, two former Conde Nast interns filed a suit and claimed they were significantly underpaid. It leads a person to wonder: What constitutes a legal internship?



(Photo: iStockphoto)

## The 4-1-1 on Internship Definitions

The U.S. Department of Labor defines an unpaid internship as lawful in the context of an educational training program when the interns do not perform productive work and the employer derives no benefit. Well, how can an employer provide an intern with a beneficial, productive work experience without giving them real work? The answer is simple: The positive experience relies on training, not working. The reality isn't so cut and dry.

"It's not a question of legal versus illegal, it's a question of under what auspices do they fall if they [employers] don't do it right," says Albert Rizzo, Esq., principal attorney at the Law Offices of Albert Rizzo,

P.C. “If a person is willing to be an intern, the person has to be there to learn, not work. If they’re working, they’re considered an employee and if there’s there to learn or train, they’re an intern.”

For instance, if an intern does photo copying or collating for an attorney, that’s work; however, if he or she shadows a lawyer in court and observe, that’s training. The Midtown-based attorney added that training examples consist of shadowing, observing and sitting in meetings. The gray area emerges when the intern no longer sits in meetings and starts actively participating and getting involved in projects.

As for why the government cares so much? “It collects taxes from employees, not interns,” Rizzo says. When employers don’t pay interns or underpay them, they’re essentially shorting the government, too.

Plus, employers may view interns as cheap labor, and if they put an intern on payroll, Rizzo says they have to pay them minimum wage. “Employers will be reluctant to do that.” This ultimately ends up negatively impacting interns: The minimum wage for New York state is \$7.25 so employers could easily pay \$10 per hour instead for someone with relevant experience who’s in need of a job.

### **Know Your Rights**

Interns have rights and should be clear on their responsibilities prior to accepting the role. “Interns should ask questions of the employer when they’re interviewing and learn what’s involved,” says Rizzo. “There’s a fine line between what’s considered training and work.”

Michael Crom, executive vice president of Dale Carnegie Training, agreed. “Interns should take it upon themselves to ask questions about what the internship will entail and clarify any ambiguous rules .... A good question to ask is, ‘What does a typical day in the life of an intern look like?’”

Another question to ask pertains to receiving benefits such as transportation cost reimbursements or free lunch. “If perks are offered to other employees, they could be considered employees,” he says. “Do the interns receive the same benefits as someone being paid?”

If the employer begins to cross the line during the internship itself, the intern should remind the employer of the responsibilities for the training experience, according to Rizo. “I would never say to an intern take an internship with the idea if they cross the line, you can sue them. First, you’d be fired and it’s not worth burning your bridges. Employers need to be really careful what they give the intern to do — [it] is a learning experience above all else.”

### **Internship rules at a glance**

According to the U.S. Department of Labor and the Fair Labor Standards Act, all internships must abide by the below regulations in order to be lawful.

1. The internship must be similar to training that would be given in an educational environment
2. The internship must be for the benefit of the intern
3. The intern does not displace regular employees
4. The employer derives no immediate advantage from the intern
5. The intern is not entitled to a job at the end of the internship
6. The intern understands that he or she is not entitled to wages

In New York, there are five additional constraints courtesy of the New York State labor laws.

1. Written notification to the intern of his/her non-wage status must be given to the intern;
2. Interns are prohibited from receiving any employee benefits;
3. The intern’s general training should qualify the intern to work in any similar business.
4. The screening process for the intern should not be the same as for an employee’s employment; and

5. Any solicitations or ads for the internship should clearly discuss education and training, rather than focus exclusively on employment.

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