

Literary Agents of Change Internship Agreement

This Internship Agreement (this “Agreement”) is between Literary Agents of Change (the “LAoC”), [Intern Name] (the “Intern”), and [Company Name] (the “Agency”) (collectively, the “Parties”). This Agreement is effective the date all Parties have signed below.

Recitals

Whereas, the LAoC sponsors a fixed-length internship program with an emphasis on diversity, equity, and inclusion;

Whereas, the Intern has been chosen by the LAoC to participate in the internship program, subject to the terms and conditions herein; and

Whereas, the Agency has agreed to host the Intern for a limited time and subject to the terms and conditions herein.

Now, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1 – The Nature of the Relationship

1.1. The Parties wish to establish an internship relationship between the Intern and the Agency on the understanding that LAoC will not be a party to that relationship. Nothing in this Agreement is designed to create an employment relationship, a partnership, or any relationship where the Intern is an agent or representative of either the Agency or the LAoC. The express goal of this Agreement is to form and maintain a relationship that does not require either the LAoC or the Agency to pay the Intern any wages. To preserve this internship relationship, the Agency agrees it will abide by all state and federal laws and regulations, including but not limited to the laws summarized here: <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships> and here: <https://www.labor.ny.gov/formsdocs/factsheets/pdfs/p725.pdf> which are included as Exhibits A and B. In brief, those regulations require the Agency to preserve a predominantly educational setting where the Intern is the primary beneficiary of this relationship.

1.2. In addition to what the law requires, LAoC emphasizes that it expects participating Agencies to respect and pursue LAoC’s two main goals in creating and sponsoring the internships: First, to increase diversity and inclusion within the literary agency community in particular and within the publishing community at large, and second, to provide to the Intern the fullest possible introduction and exposure to being a literary agent. Indeed, we expect that the participating Agencies will at all times be committed – almost single-mindedly – to providing that introduction and exposure. In short, the Intern should not be understood as being available to perform ministerial and other routine tasks and instead the Agency should always be guided by the goal of providing to the Intern the intended larger

introduction and exposure to being a literary agent. We view and expect these internships to be an intense training experience for the Intern.

1.2.1. The LAoC, Agency, and the Intern will utilize their best efforts to obtain academic credit for the Intern for the Internship. The Intern agrees he or she shall not do anything that jeopardizes qualifying for and receiving the academic credit.

1.3. The internship nature of this relationship cannot be changed except by a written agreement signed by all Parties. Any temporary breach or deviation from the requirements outlined in this Agreement shall not be construed as a waiver or modification of any kind or an attempt to change the internship nature of the relationship between the Parties.

Section 2 – Indemnification

The Agency agrees to defend, indemnify, and hold harmless any claims raised by the Intern against the LAoC and its affiliates that relate to the internship.

Section 3 – Miscellaneous

- 3.1. This Agreement shall be construed and interpreted under the laws of the State of New York. The Parties consent to the jurisdiction of the state and federal courts, as applicable, in New York, New York.
- 3.2. The Agency may require the Intern to sign its own non-disclosure agreement and other agreements requiring a professional workplace.
- 3.3. The Agency may terminate the internship at any time, with or without notice and with or without cause.
- 3.4. The Intern will maintain a regular internship schedule determined by the Intern and his or her supervisor at the Agency. The Intern will demonstrate honesty, punctuality, courtesy, a cooperative attitude, proper grooming habits, appropriate dress, and a willingness to learn. The Intern will obey all policies, rules, and regulations of the Agency.
- 3.5. The internship nature of this relationship cannot be changed except for by a written agreement signed by all Parties. Any temporary breach or deviation from the requirements outlined in this Agreement shall not be construed as a waiver or modification of any kind or an attempt to change the internship nature of the relationship between the Parties.
- 3.6. As a registered 501(c)(3) nonprofit, the LAoC endeavors to secure outside donations for this internship program. If the LAoC pays the Intern any such grant money, such money is not in exchange for performance of any services and is simply an award from the LAoC to the Intern. To be entitled to receive any grant money, the Intern must complete a Form W-9.

3.7 This internship runs for a set length of 10 weeks. There is no expectation of employment at the end of the internship. This is not a trial period before employment, and this program has no connection to any employment or to any offer of or promise of employment.

It is agreed.

Literary Agents of Change

[Intern Name]

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

[Agency Name]

Signed: _____

Name: _____

Date: _____

EXHIBIT A:

Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act

This fact sheet provides general information to help determine whether interns and students working for “for profit” employers are entitled to minimum wages and overtime pay under the Fair Labor Standards Act (FLSA).

Background

The FLSA requires “for-profit” employers to pay employees for their work. Interns and students, however, may not be “employees” under the FLSA—in which case the FLSA does not require compensation for their work.

The Test for Unpaid Interns and Students

Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA. In short, this test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts have identified the following seven factors as part of the test:

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.
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.

EXHIBIT B:

The New York State Minimum Wage Act and Wage Orders contain the state's rules for pay and overtime. These rules are in addition to those required by federal law, including the Fair Labor Standards Act. This is a guideline to help decide if a for-profit business that has interns must pay them according to the state minimum wage and overtime rules. This only applies to the State Minimum Wage Act and Orders. It does not apply to Unemployment Insurance, Workers' Compensation, and/or any other law.

* Not-for-profit organizations and institutions of any type also may have unpaid interns, if they meet all the criteria for an intern who is not in an employment relationship.

In general, an intern is only exempt from the requirements of the Minimum Wage Act and Orders if the intern is not in an employment relationship. To determine whether an employment relationship exists, the department uses six criteria from the U.S. Department of Labor and five criteria of its own to evaluate the situation.

An employment relationship does not exist only if the situation meets ALL of these criteria:

1. The training, even though it includes actual operation of the employer's facilities, is similar to training provided in an educational program. For example:

- The internship program builds on a classroom or academic experience - NOT the employer's operations.
- A college, university, secondary school, specialist, technical, vocational or trade school oversees the program and awards educational credit.
- The internship teaches skills that are useful in other jobs (not skills specific to one employer's operation).
- The intern does not perform the routine work of the business on a regular basis, and the business does not depend upon the work of the intern.
- The intern is not engaged in the operations of the employer and does not perform productive work (such as filing, other clerical work or helping customers). The intern gains a new skill, advanced knowledge or better work habits.

2. The training is for the benefit of the intern.

The intern must be the primary beneficiary of the training. Any benefit to the employer must be merely incidental. If the academic institution gives credit for the internship, it is considered some evidence of the beneficial nature of the program.

3. The intern does not displace regular employees, and works under close supervision.

Interns do not function in ways that replace or augment regular staff.

If interns do job shadowing to learn certain functions under the close and constant supervision of regular employees (but perform no or minimal work), then this is likely to be considered a true educational experience.

However, if interns receive the same level of supervision as the employer's regular workers, it suggests an employment relationship, rather than training.

Interns are considered employees if they substitute for regular workers or add to an existing workforce during specific time periods.

Interns are viewed as employees if the company would need to hire additional employees or require existing staff to work more hours to do the interns' work.

4. The activities of trainees or students do not provide an immediate advantage to the employer. On occasion, operations may actually be impeded.

The essence of a traineeship is that an employer provides a benefit to the trainees by developing their work skills or knowledge; the trainees do not benefit the employer.

In a true traineeship, the employer cannot gain an immediate advantage from the intern's presence.

In fact, in most circumstances, interns will require employers to dedicate resources (in the form of training, supervision, etc.) that may actually detract from the productivity of the worksite for some period.

5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period and are free to take jobs elsewhere in the same field.

The internship runs for a fixed period, set before the internship begins. It has no connection with any offer of employment or promise to stay with the employer.

Employers should not use unpaid internships as a trial period for those seeking employment.

Interns who are placed with the employer for a trial period, with the expectation that afterwards they will be hired as permanent employees, would generally be considered employees.

The longer an internship lasts, the more likely it will be considered an employment relationship.

6. The trainees or students are notified, in writing, that they will not receive any wages and are not considered employees for minimum wage purposes.

Such written notice must be clear and be given to the trainees or students before the internship or traineeship starts.

7. Any clinical training is performed under the supervision and direction of people who are knowledgeable and experienced in the activity.

The persons who supervise or direct any clinical, hands-on work performed by the trainees must have sufficient experience and knowledge in that industry.

Persons have “sufficient” experience and knowledge in the industry if they are proficient in the area and in all activities performed by the trainee. They must have adequate background, education, and experience to fulfill the educational goals and requirements of the training program. In addition, the persons must be competent to provide such training, with previous experience training employees or students.

8. The trainees or students do not receive employee benefits.

Examples of such benefits include, but are not limited to:

- Health and dental insurance
- Pension or retirement credit and
- Discounted or free goods and services from the employer

9. The training is general, and qualifies trainees or students to work in any similar business. It is not designed specifically for a job with the employer that offers the program.

Skills offered through the training must be:

- Useful
- Transferable to any employer in the field and
- Not specific to the for-profit employer offering the training

Any training that is specific to the employer and its operations is conclusive evidence that an employment relationship exists.

10. The screening process for the internship program is not the same as for employment, and does not appear to be for that purpose. The screening only uses criteria relevant for admission to an independent educational program.

This helps to ensure that employers do not mix recruiting of employees and interns. These searches must run independently from one another.

Educational institutions or other organizations should not consider employment-related factors when they place students with for-profit employers. They should only consider the needs of the student and the educational program.

11. Advertisements, postings, or solicitations for the program clearly discuss education or training, rather than employment, although employers may indicate that qualified graduates may be considered for employment.

This relates to the requirement that the employer tell trainees, in writing, that they are not entitled to wages for the training. This is to avoid a trainee's misunderstanding of the nature of the program, and/or an employer's misrepresentation of its nature, purposes and entitlements.