

# FIA

# SOLUTIONS

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Creation of a Trainee classification is frequently not in your best interests.

Trainees are treated as at-will employees.

If student interns are paid, FLSA implications need to be understood.

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During many of the classification studies we conduct, we receive requests for additional classifications that are, in effect, training classes. The departmental objective is to use those classes to provide opportunity for individuals to obtain the basic skills needed to perform the essential duties of the entry level class in the series. When such a class is created, a below market salary is often established for what then becomes the first level in a class series. The objective is to create a class where employees stay for a short period of time because they are either promoted or terminated.

As a general practice, we believe that creation of a specific "Trainee" classification is not in the best interest of our clients. The major exception is in the trades, where an Apprentice level may be necessary to an organization developing personnel through a formal program with the objective of moving them to the journey level. Since most apprenticeship programs last 3-4 years, a formal job classification may be appropriate – although it should include a statement that incumbents must successfully complete the formal apprenticeship program within a fixed period of time in order to retain their employment. However, under normal circumstances, we believe that when it is deemed in the best interest of the client organization, the human resources director or his/her designee may authorize the appointment of a "Trainee" to fill an open position in a specialized technical or skilled trades class subject to the following restrictions:

- Trainees will not be used for entry level general classes (e.g. administrative support, program management, etc.) unless qualified applicants for the position or job are in short supply.

- Trainees may be used in a variety of circumstances but the primary purpose is to enable a department to fill a position when fully qualified candidates are not available in sufficient number to make a selection.

- Trainees will be hired at a pay rate below the minimum of the rate of pay for the position/job classification for which training is being conducted.

- Trainee positions will not last longer than one calendar year except in the case of formal apprenticeship programs such as trades and mechanics.

- Trainees will be evaluated periodically during their training period and if their performance is satisfactory they can be advanced in pay at a pre-determined rate until reaching the minimum of the pay grade for the job classification — upon completion of the training period or until meeting the minimum qualifications for the position or job, whichever occurs first.

- Trainees are treated as at-will employees and subject to termination at any time during their training period without evidence of just cause although the normal reason for termination would be that they are not making the progress necessary to fulfill the conditions of the trainee appointment.

- Once a trainee completes a training period and is appointed to a position, the employee should then serve a full probationary period in the class to which appointed to ensure that he or she can, in fact, fully perform the essential duties of the job.

All trainee appointments should be made in writing and outline the position for which they are training, the beginning rate of pay, the

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evaluation periods and criteria for periodic increases in compensation for satisfactory performance, and a statement that employees understand that they must serve a full probationary period in the job after having satisfactorily completed their training period.

Another wrinkle to the issue of trainees and interns is relative to their status under the Fair Labor Standards Act. The interpretation is that if they are Trainees, then they are exempt from overtime requirements, even if the job for which they are training would be considered non-exempt subject to the conditions described below. However, if they are treated as employees, then they are covered by the FLSA and subject to overtime requirements. The United States Department of Labor applies a six criteria test as a result of a Supreme Court decision (*Walling v. Portland Terminal Co.*) to determine whether a trainee or intern is subject to the overtime requirements of the FLSA. The six criteria are:

- The training, even though it includes actual operation of the employer's facilities, is similar to that of a vocational school.
- The training is for the benefit of the employee.
- The trainees do not displace regular employees but work under close supervision.
- The employer providing the training derives no immediate advantage from the activities of the trainees and on occasion the employer's operations may be impeded. (Obviously, if the

employer is using the employee to perform regular work, then this criteria would not be met.)

- The trainees are not necessarily entitled to a job at the completion of the training period.
- The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

This can be an issue for many organizations that want to include a trainee level class in their structure. Unpaid student interns should not be a part of any system, but if they are paid then the FLSA implications need to be understood, as well as the property rights enjoyed by public employees unless there is a specific provision in the class that designates it a limited or fixed term job.

***How We Can Assist Your Organization:***

If your organization has experienced changes in work performed by your employees or you have experienced difficulties with your compensation program as a result of market pressures, we can assist you in restructuring both your classification and compensation programs to accommodate changes that have taken place within your organization as well as from external pressures.

Should you desire our assistance in either revising or updating your classification system, or in updating your current compensation structure, please contact us. 651-635-0976 Ext. 12 for Jim or 602-840-1070 for Bruce.

