**Free Labor or Forced Labor**

Current Legislation on the Market for Internships and a Microeconomic Analysis of Mandatory Intern Pay

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“*The aim of the popularization of economic studies is not to make every man an economist. The idea is to equip the citizen for his civic functions in community life.”*

Ludwig von Mises (Mises 1944, 115)

Recent controversy has sparked in the U.S. over whether federal and state legislation should be enacted making intern compensation mandatory in the United States. As commentator Ross Perlin writes, “Legislation on intern pay should be next on the agenda (Perlin 2015).” However, the economic consequences of implementing mandatory intern pay legislation should be carefully considered before advocating this policy. Efforts have recently been put forth by commentators, interns, and judges to make laws regarding current internship provisions even more stringent than they already are by mandating intern pay.

The Fair Labor Standards Act (FLSA) is the current governing law under which US firms must comply in constructing internship programs. Certain provisions in the FLSA unnecessarily constrain the market for internships and are, in fact, harmful for both firms and interns. Adding new legislation that mandates intern compensation will likely result in a decrease in the number of opportunities young people have to acquire internships, thus decreasing the chances of young people obtaining internships.

**I: THE PUBLIC POLICY ARGUMENT FOR PAID INTERNSHIPS**

In July, 2015, New York Times author Ross Perlin claimed that colleges that promote unpaid internship programs press young people into a “race to the bottom, working for free under the guise of training and recruitment (Perlin 2015).” [[1]](#footnote-1) Perlin’s argument is not unique, as many entities, including leading politicians, journalists, and interns themselves, argue for paid internships. These various voices have described unpaid internship programs as a form of modern-day extortion of free labor.[[2]](#footnote-2)

Two principle arguments exist that are regularly put forth by those in support of mandatory intern pay legislation. The first argument is that interns should be compensated because the majority of young people seeking out internship opportunities do not have the means to support themselves over the span of an unpaid internship. Authors at the Economic Policy Institute write that an unpaid internship, “limits participation to only the students who can afford to forego wages and pay for living expenses, effectively institutionalizing socioeconomic disparities (Edwards and Hertel-Fernandez 2010).” Experts at the Brookings Institute argue that the rich have an iron-grip on the market for internships simply because they can provide their children with the funds to live in an unpaid work situation for a time (Venator and Reeves 2015).

A second argument in support of legislation for paid internships is that interns provide valuable work for firms and therefore are entitled to compensation. Advocates for mandatory intern pay claim that businesses have a one-sided view of internships; that providing internships is primarily an altruistic act and is of no supreme benefit to a firm (Lurie 2013). The view that the intern is the party benefiting most from an internship experience is known as the “primary beneficiary” argument (Perlin 2015). The concept of “primary beneficiary” simply asks which entity benefits most from a transaction, such as an internship (Perlin 2015). Perlin, and many others, argue that the value of intern labor to a firm is high, and that the intern is not the sole beneficiary of an internship.[[3]](#footnote-3)

Regardless of the arguments supporting mandatory intern pay, the reader must understand two key points: the U.S. is already operating under law that heavily regulates internship programs,[[4]](#footnote-4) and legislation requiring mandatory intern pay will constrain, not expand, the market for internships.

**The FLSA and Definition of Terms**

In order to understand the push for mandatory intern pay legislation, one should first examine the legislation that businesses currently operate under when designing internship programs. The FLSA was a legislative result of the New Deal (Mayer, Collins, and Bradley 2013, 1). In 1938, the FLSA, under the guidance of the Department of Labor (DOL) was added to Federal law and subsequently the Wage and Hour Division (WHD) was created (Mayer, Collins, and Bradley 2013, 1).

The main purpose of both the FLSA and the WHD established by Congress was to stipulate fair labor conditions for U.S. citizens. The FLSA is a layer of law on the internship market that hampers the effectiveness and usefulness of internship programs. In the text of the FLSA, the authors cite the Congressional power to regulate commerce as their source of authority in regulating labor conditions (Mayer, Collins, and Bradley 2013, 2). In practice, the standards of labor outlined in the FLSA apply to a massive portion of the workforce in the private sector. The base requirement for a company to fall under the provisions of the FLSA is that a company must have “annual sales of at least $500,000 (Mayer, Collins, and Bradley 2013, 18).”However, if a company makes less than $500,000 annually, employees within a company may still be protected by FLSA standards (Mayer, Collins, and Bradley 2013, 2).

The examination of complex legislation requires an understanding of basic terms, and the FLSA is no exception to the rule. As one commentator on unpaid internships and the FLSA aptly wrote, “The starting point of the analysis begins with whether a person providing services is an “employee” who “works” for an employer (Snyder 2013).” In order to comprehend the broad reach of the FLSA, one first should define an “employee,” and what it means to “employ.” According to the FLSA, an employee is “any individual employed by an employer (FLSA 1938).” To be employed, then, is “to suffer or permit to work (FLSA 1938).” Any individual who is employed must be financially compensated for labor under the FLSA (DOL 2010).

**The Six-Step Test**

The definition of an employee is straightforward under the FLSA, but defining an internship position is more complex. In 1947, the WHD laid out a six-step test for employers to determine whether intern labor merits compensation (Perlin 2015). Firms must comply with the six-step test in all areas in order to begin and maintain an unpaid internship program (DOL 2010).

The six-step test runs as follows:[[5]](#footnote-5) first, the internship must be modeled after an academic experience, such as a classroom; second, the intern must gain from his or her work; third, the interns should not be permitted to complete tasks that standard employees are hired to complete; fourth, interns should not complete work that benefits the company; fifth, the attainment and achievement of an internship does not guarantee future full-time employment to an intern; and finally, the intern must be aware that he or she will not be compensated for labor (DOL 2010).

**Breaking the Law: Non-Compliance with the Six-Step Test**

If a firm neglects to design an internship program in accordance with the six-step test, FLSA regulations stipulate that interns can no longer be considered interns; rather they are employees who qualify for compensation (DOL 2010). Exemptions to the six-step test do exist. The most glaring exception is the Congressional internship. Every year, hundreds of young people arrive on Capitol Hill to complete unpaid internships. Congressional interns do not fall under the FLSA definition of employee as outlined by the Congressional Accountability Act of 1995 (Office of Compliance 2005, 47). Outside of Capitol Hill, an individual who does not want the labor protection outlined in the FLSA cannot exempt himself from the provisions in the legislation (Snyder 2013). If an individual desires to exempt himself from the FLSA by asking for no wage in exchange for service, he or she cannot do so (Snyder 2013).

**Practical Analysis of the Six-Step Test**

Analysis of the six-step test reveals that adherence to the current DOL law on internships, in many ways, results in the demise of the characteristics of an internship that make it valuable. The WHD advises that the internship must first and foremost be an educational experience for the intern. “The more an internship program is structured around a classroom or academic experience as opposed to the employer’s actual operations (DOL 2010),” the more likely the internship is to fit into the qualifications of a legally unpaid program. Generally, internships are meant to provide a participant with an accurate representation of the workplace or sector in question; purposefully altering the natural work environment of a firm into an educational experience prohibits the intern from true exposure to the job of interest.

The WHD requires that individuals participating in an internship program should not complete productive work in any capacity. Interns are permitted to follow and observe employees, while he or she “performs no or minimal work (DOL 2010).” Not only should the intern avoid productive activity, the DOL expresses that the intern might often hamper the efficient operation of business, “and on occasion its operations may actually be impeded (DOL 2010).” Prohibiting the intern from participating in productive work causes the value of intern labor to fall and eliminates the ability of a firm to determine whether an intern is capable of producing excellent work product.

Many internship programs end with the business offering a promise of future employment to the intern. If a business promises employment to an unpaid intern, the business violates the six-step test. This aspect of the six-step test is particularly harmful, as many companies use internships as an opportunity scout out future employees. The opportunity for companies to proffer future jobs to unpaid interns is hampered by the six-step test. A practical analysis of DOL law reveals that current U.S. legislation outlining the nature of internships forces firms that wish to provide unpaid internships to comply with a stringent six-step test that fundamentally alters the nature of an internship.

**II: THE NATURE OF AN INTERNSHIP**

The work that even the most talented of interns complete often does not compare to the quantity and caliber of labor that the average employee contributes to a firm. As Joseph Leonoro of the National Law Review writes, “From an employer’s perspective, it may make good business sense not to pay the intern since they usually are not providing the same experience, skill, and expertise which regular employees provide (Leonoro 2015).” The value of the work that the intern does is often not as fundamental to the success of a firm as the work of an employee.

The reader may wonder why the internship market is still thriving if the labor interns complete is not crucial to the success of a firm. The intern-firm relationship still exists because of the principle of mutually beneficial exchange. Mutually beneficial exchange is the concept that in every market transaction, both individuals engage in exchange because they gain something from the transaction. Economist Hans-Hermann Hoppe writes, “Contrary to the case of slave and slave master where the latter benefits at the expense of the former, the relationship between the free laborer and the capitalist is a mutually beneficial one…Their interests are not antagonistic but harmonious (Hoppe 2006, 122). Internships exist because both the company and the intern benefit from working with each other.

 Young people gain from internships for several reasons: obtaining the opportunity to participate in and observe a work environment in a field of interest is valuable and trains them for larger tasks upon entry into the workforce; also, internships provide young people with experience to place on their résumé—making them more appealing to future employers (Leonoro 2015). Employers also gain from maintaining internship programs. Interns often complete the labor that a firm would not be willing to pay for otherwise. Hiring interns is also a low risk way for employers to invest in human capital that they might be able to draw from later on when the intern becomes eligible for hire.

**III: MICROECONOMIC ANALYSIS OF THE MINIMUM WAGE**

Examining the FLSA and its provisions on internships reveals that internships are already heavily regulated in the U.S. Those who advocate paid internships are, in effect, recommending the application of minimum wage law on the market for internships. A minimum wage is a price floor. A price floor is the lowest legal price that an individual can pay for a good or service (Goolsbee, Levitt, and Syverson 2013, 81); in this instance, a minimum legal price on the service that interns provide. There are two kinds of price floors, ineffective and effective. Whether or not a price floor is effective or ineffective is dependent upon where the price of the good or service is set in relation to the market clearing price for the good or service.

The market clearing price is the price that would have been paid in a market for a good or service absent any intervention in the market. An ineffective price floor is one that is set beneath the market clearing price (Goolsbee, Levitt, and Syverson 2013, 83). An effective price floor is one that is set above the market clearing price for a good or service and does alter the price paid for a good or service (Ritenour 2010, 419). In the case of the minimum wage, an effective price floor is when legislators set the minimum wage above the price that employers would typically be willing to pay for labor (Ritenour 2010, 424).

 Understanding the process of market adjustment when the government does not set price floors is key to determining whether an effective price floor is a harmful economic policy. When a price rises above the market clearing price in a market where there is no price floor, the market moves into a state of excess supply. Excess supply means that the quantity supplied for a good or service in the market is greater than the quantity demanded. In a state of excess supply, the most eager sellers will bid down the price of a good to a new market clearing point where both buyers and sellers are satisfied.

In a market where the government does engage in price fixing and the price of a good or service is legally set above the market clearing price, the market moves into a permanent state of excess supply; this is known as a surplus (Sowell 2007, 55). Because the market price has been legally set, prices cannot adjust according to the preferences of consumers and producers, resulting in economic inefficiency and discontent buyers and sellers.

**IIII: THE MICROECONOMIC ANALYSIS OF THE MARKET FOR INTERNSHIPS AFTER LEGISLATION**

*“You can lead a horse to water, but you can't make him drink.”*

In the U.S., the typical market price for intern labor is either extremely low or no compensation whatsoever. Setting a wage for interns would then raise the cost of maintaining interns far above what employers are typically used to expending on untrained labor. The impact of legislation for paid internships may be even more drastic than a minimum wage law for employees because the work that an intern completes is often not valuable enough to merit compensation. A firm values labor in relation to how much that labor contributes to the firm’s ability to most effectively serve the consumer (Bagus 2004). After legislation requiring intern pay is passed, firms may no longer view it as economically profitable to hire untrained interns with low productivity.

Legislators can legally enforce payment of interns, but they cannot force employers to hire interns. The demand for interns is determined by the employer, not the government. As economist Hans Sennholz writes: “The specific demand for labor depends on the preferences and choices by entrepreneurs in the labor market. Their bidding for labor in turn is dependent on their anticipation of the productivity of labor, which is the value consumers ascribe to labor services (Sennholz 1985).” If legislation requiring intern pay is implemented, an increased number of young people will be drawn to the promise of compensation and attempt to achieve internships, causing an increase in the supply of labor by interns. Post-legislation, a firm may deem it economically unprofitable to pay for labor that would have otherwise been free, and so the firm may either reduce the size of an internship program or completely retire it rather than to lose money on hiring the untrained. While legislation mandating intern pay will increase the number of young people willing to work, many firms may deem it economically unprofitable to tap into the burgeoning supply of labor, therefore resulting in a surplus of workers with no place to work.

After legislation is enacted mandating intern pay, there will still most likely be some firms in a market who are willing to maintain internship programs if those programs are economically effective. James Sherk, economist and expert on minimum wage policy, states, “Raising the minimum wage makes such entry-level positions less available, in effect sawing off the bottom rung of many workers’ career ladders (Sherk 2013).” Firms will seek out the most qualified candidates for internship programs. The young people able to obtain internships post-legislation for intern pay are the candidates who are likely to have the greatest productivity in the workplace.

 Ostensibly, mandatory intern pay would lend a hand to young people who are struggling to enter the internship market; in reality, the arguments in support of mandatory intern pay lack sound economic reasoning and end up decreasing the chance that a young person will gain an internship. An increase in legislation for paid internships presses the untrained young people out of the market for internships, thereby depriving the least skilled workers in an economy the opportunity to gain experience and eventually use their skills to thrive and serve others in the workforce.

Ludwig von Mises writes in his book *Bureaucracy,* “The aim of the popularization of economic studies is not to make every man an economist. His idea is to equip the citizen for his civic functions in community life (Mises 1944, 115).” Mises’ goal was to get the everyday man to look behind the initial allure of certain public policies. In considering recent advocacy for mandatory intern pay, the reader must be mindful of the present, but not immediately evident, negative economic impact of such policies on the very young people that the proposed policy aims to assist.

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1. The title of Perlin’s article is aptly titled, “Interns, Victimized Yet Again.” Most of Perlin’s argument is a lament of the “victimized” interns who work without compensation.

 [↑](#footnote-ref-1)
2. Two interns sued Fox Searchlight Pictures in 2011 after completing unpaid internships on the set of the film *Black Swan*, claiming that their lack of compensation was unfair (Greenhouse 2013). This is one of many examples of interns and commentators protesting unpaid internships.

 [↑](#footnote-ref-2)
3. To read a particularly vehement defense of payment of interns, read the following article:

<http://www.huffingtonpost.com/mike-harden/why-you-need-interns-and-_b_6803050.html> [↑](#footnote-ref-3)
4. The Fair Labor Standards Act. [↑](#footnote-ref-4)
5. Note that the entirety of the information in this paragraph comes from the in-text citation referenced at the end of the paragraph. [↑](#footnote-ref-5)