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**Taija Sparkman** • Oct. 14, 2015



There's a lot being debated right now in terms of payroll legislation. The proposed and recently passed changes not only affect the wages they earn, but also redefine how they're classified. Each change will impact business differently and could send your clients headed to your practice in a frenzy. From student internships to

increases to the minimum wage, your clients will want to know, “What does this

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impact their business.

### **Unpaid Internships**

If your clients currently offer an internship program, they may be able to bring on more unpaid interns. Earlier this summer, the Second Circuit federal appellate court ruled in favor of several unpaid interns who worked for Fox Searchlight Pictures, Inc. and Fox Entertainment Group, Inc. The Court rejected a six-part test that had previously been used to determine if interns were employees and thus entitled to pay. Previously, two of the major criteria that determined if interns were entitled to be paid were the displacement of regular employees in their work and an immediate benefit and advantage to the employer from such activities. The Court decided to adopt a new standard under federal and New York law that looked at the following set of factors:

1. The extent to which the parties understood there was no expectation of compensation (any promise of compensation suggests an employee relationship)
2. The extent to which the internship provides training similar to clinical, hands-on or other training in an educational environment
3. The tie between the internship and the intern's formal education program, such as through integrated coursework or the receipt of academic credit
4. The internship's alignment with the academic calendar and accommodation of the intern's academic commitments
5. The extent to which the internship is limited to the period in which it provides the intern with beneficial learning
6. The extent to which the intern's work provides significant educational benefits and complements, rather than displaces, the work of paid employees
7. The extent to which the parties understand that there is no entitlement to a paid job at the conclusion of the internship

While this new ruling allows for more unpaid interns, it does so under the

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Act. Classification as an independent contractor is largely dependent upon the individual operating a truly separate business operation and any one employer not being solely responsible for direct income or referral work for the individual.

When determining if workers are truly employees or independent workers, you and your clients should still look at the “economic realities test,” which considers:

1. The extent to which the work performed is an integral part of the employer's business
2. The worker's opportunity for profit or loss depending on his or her managerial skill
3. The extent of the relative investments of the employer and the worker
4. Whether the work performed requires special skills and initiative
5. The permanency of the relationship
6. The degree of control exercised or retained by the employer

### **Proposed Overtime Exemptions**

As previously reported, the DOL has proposed changes that would change the minimum salary threshold to be exempt from overtime pay. The new minimum salary threshold would be \$50,440, almost double what it is now. The deadline for public comments on the proposed overtime wages rule was last month, but experts expect the final rule to be released in early 2016, although there is no hard deadline. If passed, an anticipated 4.6 million white collar employees and 36,000 highly compensated employees will become eligible for overtime pay.

Since the change could cause significant changes to your clients' payroll, it's a good idea to start discussing the potential impact of these changes now. Advise your clients to review work hours for their employees and assess if it would be beneficial to give raises to any employees that are near the threshold and likely to work more than 40 hours per week. Keep in mind the reclassification from exempt to non-

exempt could affect the benefits employees are now eligible for, so you should review

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work with your clients to upgrade their current time tracking and payroll systems, as well as the current payroll services your firm provides.

With changes to internship status, minimum wage and overtime pay, it's a good idea to set aside time with each of your clients to review how these changes impact them. For additional information on payroll laws by state, check out this guide on SurePayroll's website: <http://www.surepayroll.com/online-payroll/payroll-by-state.asp>.

Income Tax • Payroll

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