

Are You an Employee?

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There are many farrier business owners who have been utilizing interested people, beginner farriers and apprentices for helping them in their day to day tasks. Generally these people are helping load and unload tools, clean-up, and generally finish feet. The problem is a person being utilized in this manner may very well be an employee entitled to employee benefits.

What is an Externship?

An externship is basically considered job shadowing. Externships can vary in length, usually lasting one or two days, but can last as long as several weeks. Externship generally involves shadowing any professional through a normal day's activities. Externships offer no pay or academic credit.

The goal of an externship is to gain an insider's view of the farrier profession as well as an excellent way to learn about the day-to-day work life of a farrier. It offers the person a chance to see if the farrier professional is what they desire to do as well as provide some professional contacts for future networking.

The extern may also participate in some of the job duties of the farrier profession but must be closely supervised. There is less focus on job training, as the extern may or may not choose to pursue that career. Externs are generally not considered employees.

What is an Internship?

An internship is any official or formal program that provides practical experience for a person in an occupation or profession. Most internships are work experience internships which essentially is on-the-job training in a field that the person wants to learn more about. There isn't a single legal definition of an intern, in large part because there are many laws, both state and federal, that govern a relationship where people perform labor or services for others.

An internship is primarily designed to educate the intern. Sometimes interns are paid a low wage, sometimes they are unpaid but receive credit, and sometimes they are volunteers getting neither pay nor credit. Interns are not bound to work for an employer after the internship is over, although many interns do receive job offers.

If an intern is unpaid, they are usually subject to stringent labor guidelines and in some states like California; unpaid interns must receive college credit for their work

If the employer is providing opportunities that allow an intern to learn certain functions under the close and constant supervision of themselves or regular employees, but the intern performs no or minimal work, the activity is more likely to be viewed as a bona fide education experience.

The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer. Internships in the private sector will most often be viewed as employment, unless they meet certain requirements. Interns who qualify as employees must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.

The requirements to be considered an intern and non-employee are:

1. The internship is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA.

What is an Apprenticeship?

An apprenticeship is generally defined as a person who undertakes a system of learning a craft or trade and is paying for the instruction by a giving a length of time (days, months, years) for work. The terms of apprenticeship are regulated by many labor agreements as well as by law. Because a person is working and learning at the same time, apprentices are considered employees, not independent contractors, and are subject to the benefits of an employee.

Apprenticeship programs are occupational training programs that combine on-the-job work experience with technical or classroom study. Such programs are designed to develop useful job skills in individuals entering the farrier work force. In many states, apprenticeship programs are required to obtain occupational licensing or certification in order to offer apprenticeships so to ensure that the programs meet standards relating to job duties, instruction, wages, safety and health conditions.

When a person is an employee, employers must pay state and federal unemployment tax, social security tax and workers compensation/disability premiums to a State Insurance Fund.

Should employers incorrectly define a person as an independent contractor, they may find themselves liable for past taxes including FICA and federal unemployment tax. Misclassification of an individual as an independent contractor may also have a number of costly legal consequences.

What are the differences between an independent contractor and an employee?

Sometimes a difficult status to define, what makes an independent contractor has been outlined by common law principles, FLSA, and the decisions of some courts.

The IRS and many states have adopted common law principles to define an independent contractor. These rules focus primarily on the level of control an employer has over a service or product, meaning, whether or not the employer actually defines what is being done and how it will be accomplished.

Common law principles further define independent contractor status by method of compensation. If a person is on an employer's payroll and receives a steady paycheck, clearly that the person is an employee and not an independent contractor.

Other considerations when identifying someone as an independent contractor may include the following “economic realities” tests:

1. If the person supplies their own equipment, materials and tools;
2. If all necessary materials are not supplied by the employer;
3. If the person can be discharged at any time;
4. If the person chooses whether or not to come to work without fear of losing employment;
5. If the person controls the hours of employment thus indicating they are acting as an independent contractor.