

Fair Labor Standards Act and Non-Paid Work-Based Learning Experiences

Non-paid work-based learning experiences (WBLEs) play a vital role in supporting students with disabilities by offering opportunities to develop skills and build professional networks in the natural environment. When structured in compliance with the Fair Labor Standards Act (FLSA), these experiences serve as a bridge between education and employment, focusing on the educational benefits for the student rather than employer needs. FLSA-compliant non-paid WBLEs help students explore careers, advocate for accommodations, and demonstrate their abilities while promoting workforce inclusion. These opportunities ultimately support students with disabilities in transitioning successfully to meaningful employment.

What is the Fair Labor Standards Act?

The Fair Labor Standards Act of 1938 is a federal law that establishes core labor standards in the United States. It sets a national minimum wage, requires overtime pay at 1.5 times regular wages for hours worked beyond 40 per week, prohibits most child labor under age 16, and mandates employers maintain accurate records of employee work hours and wages. The law applies to most private and public sector employers, though some workers are exempt from certain provisions.

What Are the Guidelines for Establishing Non-Paid WBLEs?

The FLSA only governs situations where there is a clear employment arrangement between defined employer and employee. However, The U.S. Department of Labor (DOL) has developed additional guidelines for schools and rehabilitation organizations to follow when providing non-paid WBLEs. These guidelines were developed to ensure that work experiences primarily benefit the student's education rather than providing immediate advantage to the employer (see Figure 1 on page 2).

Guidelines for Practice

Adhering to the guidelines helps ensure non-paid WBLEs comply with the FLSA and provide meaningful learning experiences for students with disabilities without violating labor laws. Below are some key guidelines for schools and businesses to follow when implementing non-paid WBLEs for students with disabilities:

1. Review the DOL guidelines with all stakeholders—employers, school staff, and parents.
2. Develop a training agreement that includes the DOL guidelines and require signatures acknowledging agreement by the student, parent, teacher, and business liason.
3. Include in the student's IEP how tasks and responsibilities at WBLEs support IEP goals and transition plans (see guidelines 3 and 5).
4. Develop a method to monitor activities performed at WBLEs (see guideline 5) and train staff on-site to understand these requirements.

Additional Resources

The Test for Non-paid Interns and Students
<https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships>

Handbook for Implementing a Comprehensive Work-Based Learning Program According to the Fair Labor Standards Act
<https://conservancy.umn.edu/items/d5ffae09-a734-4529-b1ce-1bc6e834e41e>

References

- U. S. Department of Labor. (2017). *Field operations handbook*. Retrieved from <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-64#b64c08>

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Figure 1: U.S. Department of Labor Guidelines for Establishing Non-Paid WBLEs

1. *Participants are individuals with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable, and who, because of their disability, will need intensive ongoing support to perform in a work setting.*
2. *Participation is for vocational exploration, assessment, or training in a community-based worksite under the general supervision of rehabilitation organization personnel, or in the case of a student with a disability, public school personnel.*
3. *Community-based placements must be clearly defined components of individual rehabilitation programs developed and designed for the benefit of each individual.*
 - *Each student with a disability shall have an Individualized Education Program (IEP) that lists the needed transition services established for the exploration, assessment, training, or cooperative vocational education components.*
 - *Each participant in a community-based rehabilitation organization program must have an Individual Plan for Employment (IPE) that includes a statement of needed transition services established for exploration, assessment, or training components. In the past, these plans were called Individualized Written Rehabilitation Plans.*
4. *Documentation will be provided to the WHD upon request that reflects that the individual is enrolled in the community-based placement program, that this enrollment is voluntary, and that there is no expectation of remuneration. However, the information contained in the IEP or IPE does not have to be disclosed to the WHD. The individual with a disability and, when appropriate, the parent or guardian of each individual must be fully informed of the IEP or IPE and the community-based placement component of the plan.*
5. *The activities of the individuals with disabilities (i.e., participants) at the community-based placement site do not result in an immediate advantage to the business. Factors that would indicate the business is advantaged by activities of the individual include:*
 - *Displacement of regular employees*
 - *Vacant positions have been filled with participants rather than regular employees*
 - *Regular employees have been relieved of assigned duties*
 - *Participants are performing services that, although not ordinarily performed by employees, clearly are of benefit to the business*
 - *Participants are under continued and direct supervision of employees of the business rather than representatives of the rehabilitation facility or school*
 - *Placements are made to accommodate the labor needs of the business rather than according to the requirements of the individual's IEP or IPE*
 - *The IEP or IPE does not specifically limit the time spent by the participant at any one site, or in any clearly distinguishable job classification*
6. *While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours spent in each activity, as a general rule, an employment relationship is presumed not to exist when each of the three components does not exceed the following limitations:*
 - *Vocational explorations: 5 hours per job experienced*
 - *Vocational assessment: 90 hours per job experienced*
 - *Vocational training: 120 hours per job experienced*

In the case of students, these limitations apply during any one school year.
7. *Individuals are not entitled to employment at the business at the conclusion of the IEP or IPE. However, if an individual becomes an employee, he or she cannot be considered a trainee at that particular community-based placement unless in a different, clearly distinguishable occupation.*

Note: Reprinted from the Field Operations Handbook (2017, Ch 64c08). WHO = Wage and Hour Division.

