



# Fine Print

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## EPA's Lead Renovation, Repair and Painting Rules Impact Home Repairs

By Joseph M. Reidy

For businesses related to home repair and remodeling, spring is usually a busy season. It's the time when many homeowners want to improve their homes. However, since last year, when the Environmental Protection Agency's (EPA) Lead Based Paint Renovation, Repair and Painting Rules (Rules) took effect, the cost of these repairs has gone up significantly. The Rules require that a certified individual or firm perform all renovation activities (above a certain threshold) at single family homes, multi-family dwellings and child-occupied facilities (such as childcare centers and kindergartens) built before 1978.

See <http://www.epa.gov/lead/pubs/renovation.htm>.

The Rules apply to **anyone who receives compensation** for renovation work resulting in the disturbance of painted surfaces that might contain lead contaminants. The Rules primarily affect specialty trade contractors such as painters and carpenters, but they also apply to owners of rental property and government or nonprofit organizations that per-



form their own rehabilitation work. Small maintenance projects (under six square feet indoors and under 20 square feet outdoors) are exempt from these requirements, unless they involve window removal, demolition or the use of prohibited practices such as open-flame paint

strippers and power tools without HEPA filters.

Under the Rules, all applicable projects must be supervised by a certified renovator. The certified renovator must ensure that the renovation

is performed in accordance with the work practice standards of the Rules. Before starting a renovation project, unless it is an emergency repair, the certified renovator must give the homeowner an EPA lead safety pamphlet or, if a multi-family building is being renovated, post signs in common areas to alert the tenants.

The Rules mandate that lead dust and debris must be contained, and that the work area must be cleaned up daily while the project is underway and inspected once the project is completed. These requirements can add hundreds, if not thousands, of dollars of additional costs to a typical home renovation project.

A firm can become certified

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## Unpaid Internships: Are They Legal or Not?

By Kevin Hoskins

Studies show that the recent decline in the U.S. economy has led to an upswing in the number of available unpaid intern positions. Unpaid internship programs allow companies to train and develop potential employees while providing the interns, who are typically college or graduate students, more experi-

ence in the work place. Companies should be careful, though, not to use such programs simply as a means of acquiring free labor.

Employers and students often do not realize that most unpaid internship programs violate the Fair Labor Standards Act (FLSA), which requires that nonexempt employees receive the minimum wage for all hours worked. In the last few years, the U.S. Department of Labor (DOL) and its state counterparts have begun to investigate such internship programs. Investigations

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under the Rules by submitting an application to the EPA. A certified firm must, in turn, provide training to its employees. An individual worker can become a certified renovator by successfully completing an eight-hour initial renovator training course offered by an accredited training provider. The certified individual must then complete an accredited four-hour

refresher course every five years.

Renovators should take all steps necessary to ensure they are in compliance with the Rules, because violations may carry substantial penalties of up to **\$32,500 per day**.

The Rules do not apply to homeowners' do-it-yourself renovations. However, if children under six live in the home or will be vis-

iting, homeowners should follow the work practice standards spelled out in the Rules to protect these children from the potential harms associated with exposure to lead.

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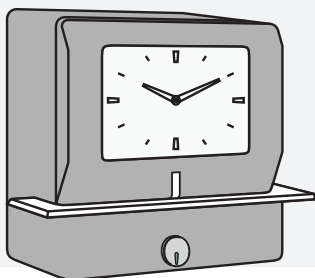
**In the Hopper...**

*State legislation that could affect small business*

**"Comp" Time for Ohio Small Businesses?**

House Bill 61, which is now before the House Economic and Small Business Development Committee, would allow small, private employers to give compensatory ("comp") time to employees who work more than 40 hours in a week. Such "comp" time would replace overtime pay and is subject to the consent of the employee. The bill would apply to businesses with gross sales of less than \$500,000. Federal law governs larger businesses, which allows "comp" time for public employees, but not for private sector employees. Currently, Ohio law neither allows nor prohibits "comp" time.

*From the OSBA Office of Government Relations.*



**Internships**, cont. from page 1

in Oregon, California, New York and several other states have led to significant fines for the employer and the payment of wages to the supposed intern.

Based on the U.S. Supreme Court's interpretations of the FLSA, the Wage and Hour Division of the Department of Labor has established a test for determining whether an intern truly is a trainee or is an employee who is entitled to payment. The test requires that each of the following statements about the intern's engagement be true:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainee;
3. The trainee does not displace regular employees, but instead works under their close observation;
4. The employer providing the training derives no immediate advantage from the activities of the trainee, and on occasion, the employer's operations are actually impeded;
5. The trainee is not necessarily entitled to a job at the conclusion of the learning experience (though the employer may offer a job to the trainee); and
6. The employer and the trainee

understand that the trainee is not entitled to wages or other compensation for the time spent in training (though a stipend may be paid for expenses).

If any of the above statements are false with respect to the intern's engagement, then that person is entitled to payment under the FLSA, which includes payment of the minimum wage and overtime compensation. However, it should be noted that the DOL does not interpret the fourth prong of the test to mean that the intern cannot provide any benefit to the employer. The intern's benefit from the internship must simply outweigh the employer's benefit.

With the summer season for unpaid internships underway, now is the time to assess your company's compliance with the FLSA. Employers wishing to use unpaid interns should tailor their internships to comply with the DOL's six-prong test. If the employer cannot satisfy the DOL test, then the employer must compensate the person in accordance with the FLSA.

**Companies should be careful not to use [unpaid internships] simply as a means of acquiring free labor.**

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