

# "INTERN(AL) AFFAIRS": MANAGING UNPAID INTERNSHIPS IN BRITISH COLUMBIA

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With the end of another school year comes the annual insurgence of students and new graduates into the marketplace, all of whom are eager to build their resumes by gaining practical experience in their chosen fields, even if that experience comes in the form of an internship. "Intern" is a word that conjures up the image of a young hopeful feverishly working away at a business in a junior position for little or no pay (except, of course, a wealth of practical experience).

While most employers are aware of their obligations to employees under British Columbia's *Employment Standards Act* (the "ESA"), when the phraseology shifts from "employment" to "internship," some employers assume their legal obligations to "interns" differ from their legal obligations to "employees," as evidenced by the [Internship Inspection Blitz Report](#) released by the Ontario Ministry of Labour.

## **Practicums versus Internships**

In interpreting the *ESA*, the British Columbia Employment Standards Branch (the "ESB") makes a key distinction between what they consider a practicum and an internship.

Based on the interpretation of the ESB, a practicum is a part of a formal education process for students enrolled in a public or private post-secondary institution that involves the supervised practical application of previously classroom taught theory related to course study. The ESB considers a practicum to be hands-on training that is required by the curriculum of the program, and will result in a certificate or diploma. As such, a practicum is not considered to be "work" for the purposes of the *ESA* and is exempt from its provisions.

Internships however, are considered on-the-job training offered by an employer to provide a person with practical experience. It is often the case that internships are offered to people who have already completed a diploma or degree and are now seeking employment. As such, internships are generally considered "work" for the purposes of the *ESA*, and must be paid in accordance with the minimum standards as set out therein, including hours of work, minimum wage, overtime pay, vacation pay, etc.

## **The Narrow Exceptions**

Unpaid internships are impermissible in British Columbia unless the internship falls under one of the following narrowly construed exemptions listed in the *Employment Standards Regulation*:

1. Many employment standards, including minimum wage, hours of work, overtime, rest periods, etc. do not apply to professionals, or people training to be professionals, in designated fields such as doctors, lawyers, nurses, engineers, and accountants.
2. Students who are enrolled at a secondary school who are engaged to work at the secondary in which they are enrolled, in a work study, work experience, or occupational study class, are excluded from the ESA.

Unlike in other jurisdictions, there is no "training wage" in British Columbia. For reference, the current minimum wage in British Columbia \$10.25/hour.

### **Employer Take-Aways**

Employers who offer internships that are not approved by an educational institution should review their programs and practices to ensure they are meeting their legal obligations under the *ESA*. While there is no harm in using the word "intern" or "internship" to describe a temporary, entry level position in such situations, employers should be cognizant of the fact that such labels are meaningless from a legal prospective and such interns are likely entitled to the same *ESA* protections as the employer's other employees.

Further, even where an internship is approved by an educational institution, employers should ensure that the arrangement is properly papered between the employer, the educational institution, and the intern to cover off respective obligations, including who will be providing Workplace Safety Insurance, if applicable.

As a final note, the regulations regarding internships vary significantly from province to province. As such, if you have operations in other provinces, please see our other articles in our "Intern(al) Affairs" series for a primer on these regulations in other jurisdictions.

by Tyson Gratton

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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