

"INTERN(AL) AFFAIRS": MANAGING UNPAID INTERNSHIPS IN ONTARIO

Posted on June 12, 2015

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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 Ontario's *Employment Standards Act, 2000* (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.

The Rule: When is an intern an intern and not an employee?

Unpaid internships are impermissible in Ontario unless the internship falls under one of the three narrowly construed exemptions listed in the ESA:

1. Internships that are part of a program approved by a secondary school board, college, or university;
2. Internships that provide training for certain enumerated professions, including architecture, law, public accounting, veterinary science, dentistry, and optometry; and
3. Internships that meet the six conditions required for the intern to be considered a "trainee".

In all other instances, "interns" fall within the broad definition of "employee" under the ESA and are entitled to the minimum standards under the ESA, including hours of work, minimum wage, overtime pay, vacation pay, etc. Accordingly, the fact that a worker is called an "intern", is irrelevant to the determination of whether that worker is entitled to the protections of the ESA.

The Narrow Exceptions

1. The ESA does not apply to a student who performs work under a program approved by a secondary school board, college of applied arts and technology or a university. This exception exists to encourage

employers to provide students enrolled in such programs with practical training to complement their classroom learning. Typically, students receive school credits for participating in these internship programs and may also be compensated with honorariums or bursaries.

2. Many employment standards, including minimum wage, hours of work, overtime, rest periods, etc. do not apply to professionals in designated fields. Therefore, since the ESA does not normally apply to such professionals, the ESA also does not apply to such professionals when they are receiving training in their designated field.
3. Under the ESA, a worker will not be considered an employee during a training period where all of the following six conditions are satisfied:

The training is similar to that which is given in a vocational school;

1. The training is for the benefit of the individual;
2. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained;
3. The individual does not displace employees of the person providing the training;
4. The individual is not accorded a right to become an employee of the person providing the training; and
5. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training.

If all of the conditions are not met, the worker is an employee, who is entitled to the protections of the ESA. Where most employers will inevitably fall short in meeting the conditions is number 3 above, particularly employers who rely on a large number of interns to meet seasonal demands over the summer.

Since the definition of employee in the ESA includes "a person who receives training from a person who is an employer", these conditions will rarely be satisfied by an employer who does not take on an intern under a program approved by an educational institution.

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 Dave J.G. McKechnie and Stefanie Di Francesco

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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