

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

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The situation regarding unpaid interns in Quebec has gained considerable attention in the last few years. Students and recent graduates entering the marketplace are eager to gain experience in their respective fields and build their resumes, and are often willing to work for free to do so. While employers could perceive this situation as an ideal opportunity, they could quickly be exposed to claims and liability if they fail to comply with the legal requirements relating to employment, even if the intern may agree not to be paid.

Provincial and federal employment legislation outlines the rules and regulations applicable to employees. However, the requirements applicable to interns are not as clear. Employers must therefore be vigilant and ensure that the "intern" does not fall into the definition of "employee".

General Rule

Quebec's *An Act Respecting Labour Standards* (the "ALS") defines an "employee" as a "person who works for an employer and who is entitled to a wage". The notion of employee also includes a worker who is a party to a contract under which he or she:

- (i) undertakes to perform specified work for a person within the scope and in accordance with the methods and means determined by that person;
- (ii) undertakes to furnish, for the carrying out of the contract, the material, equipment, raw materials or merchandise chosen by that person and to use them in the manner indicated by him or her; and
- (iii) keeps, as remuneration, the amount remaining to him or her from the sum he has received in conformity with the contract, after deducting the expenses entailed in the performance of that contract.

The general rule under the ALS is to the effect that an employee is entitled to be paid a wage at least equivalent to the minimum wage, as determined by regulation.^[1] As such, if the intern falls into the abovementioned criterion of the definition of employee, the requirements outlined in the ALS with respect to minimum wage, hours of work, overtime pay, vacation pay, etc., would receive application. Courts have stated in multiple instances that the notion of "employee" must receive a broad interpretation. In most cases, unpaid

internships will therefore be against the law, except as outlined hereafter.

The Narrow Exceptions

Unpaid internships are not permitted in Quebec unless the internship falls under one of the three narrowly construed exemptions listed in the ALS:

1. The ALS does not apply to a student who works during the school year in an establishment selected by an educational institution pursuant to a job induction program approved by the *Ministère de l'Éducation, du Loisir et du Sport* or the *Ministère de l'Enseignement supérieur, de la Recherche, de la Science et de la Technologie*. This exception exists to encourage employers to provide practical training to complement the students' classroom learning. Typically, students receive school credits for participating in these internship programs and may also be compensated with honorariums or bursaries.
2. The ALS provides that many employment standards, including minimum wage, hours of work, overtime, rest periods, etc. do not apply to internships that provide training within the framework of a vocational training program recognized by law, including architecture, law, accounting, etc.; and
3. The ALS also provides that said employment standards do not apply to a student employed in a non-profit organization having social or community purposes, such as a vacation camp or a recreational organization.

In all other instances, interns will be considered as employees under the ALS and will be entitled to the employment standards outlined therein. The qualification of a position as an internship is therefore irrelevant when it comes to determining the applicable employment standards.

Employer Take-Aways

In a context where unpaid internships are on the rise, employers should be mindful of their programs and practices in order to ensure they are in compliance with the legal requirements under the ALS. The ALS provides that the labour standards contained therein are of public order, and that any provision of an employment agreement which contravenes a labour standard or that is inferior thereto is null and void. As such, we recommend that legal advice be sought to ensure that the employer's internship program meets all of the applicable legal requirements. Further, the employer should document in writing the basis pursuant to which the position is unpaid, in order to avoid later disputes with respect to the trainee or the intern's status under the ALS. 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.

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1 As of May 1, 2015, the minimum wage payable to an employee in Quebec is \$10.55 per hour.[ps2id id='1' target='']

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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