

The Crackdown on Unpaid Internships

As you may have read in the news last week, the Ontario Ministry of Labour has ordered two prominent magazines to cease their unpaid internship programs following complaints they received. The Ministry also indicated that as of April 1st, every inspector in the Ministry will be targeting the magazine industry in the Province of Ontario, with other industries likely not too far behind. Given this publicity, and the fact that it was recently reported Statistics Canada estimates there are up to 300,000 unpaid interns working across Canada, it won't be too long before other provinces start to look into unpaid internships. What will they be looking for?

Well to start, in most cases minimum standards legislation requires an employer to pay at least minimum wage if a person performs work. That said, minimum employment standards legislation does not expressly address 'internships' and therefore the issue that must be determined is whether or not an 'intern' is performing work under minimum employment standards legislation.

In Ontario, the *Employment Standards Act, 2000* sets out a six-part test to determine if a person receiving training is an employee (and thus minimum standards would apply) or not. Specifically, if a person in training meets all six of the following conditions, employment standards, including minimum wage, will not apply:

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

Ontario also has an educational training exemption which specifies that both secondary school students who perform work under a work experience program authorized by a school board and college or university students who perform work under a program authorized by their institution are exempt from minimum employment standards legislation.

In British Columbia, the definition of an ‘employee’ under minimum standards legislation includes a person who (i) is receiving or entitled to wages for work performed, (ii) an employer allows, directly or indirectly, to perform work normally performed by an employee, (iii) is being trained by an employer for an employer’s business. While not legally binding, the Interpretation Guidelines Manual defines ‘internship’ as *“on the job training offered by an employer to provide a person with practical experience”*, to which minimum standards legislation would apply. This would be contrasted with a ‘practicum’, which is defined as *“hands-on training that is required by the curriculum, and will result in a certificate or diploma”*, to which minimum standards does not apply.

In the rest of Canada the issue is less clear. Each jurisdiction requires an employer to provide wages where work is performed but defines ‘employee’ and ‘work’ very broadly. Further, these jurisdictions lack the interpretation aids that are available in Ontario and B.C. Given the lack of clarity, the best practice would be to pay at least minimum wage to any person who either (a) performs similar work to those of an organization’s employees; or (b) performs tasks that an organization derives value from.

If you would like to discuss ‘internships’ or would like someone to take a closer look at your engagement of ‘interns’ please do not hesitate to contact e2r Solutions*.

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