

Listen Up! Sirius XM Radio to Pay Unpaid Interns \$1.3 million USD

Sirius XM Radio Inc., has agreed to pay up to \$1.3 million USD to settle a class action law suit which alleges it failed to pay interns as required under US law. Sirius XM argued that it was not required to pay interns because of an exemption (similar to an exemption available in various provinces across Canada) which allows unpaid internships if the internship is designed primarily to educate young people in a particular field. While still claiming that it believed the unpaid internship program was legal, Sirius XM agreed to the settlement in order to avoid costly litigation.

Given the information contained in our Alert from April 2014, and our recent summer e-Learning seminar, this news should not come as a surprise to employers as many jurisdictions across Canada and the United States have cracked down on unpaid internships that do not fall within the specific exemptions under employment standards legislation. For example, in Ontario, both Toronto Life Magazine and The Walrus Magazine shut down their internship programs as a result of a Ministry of Labour complaint. In addition to the Sirius XM lawsuit in the United States, Warner Music Group Corp. recently agreed to pay more than \$4.2 million to their unpaid interns, which followed even larger settlements by NBCUniversal, Condé Nast, and Viacom Inc.

While employers in Canada do not see Ministry of Labour awards or settlements in the range of that paid by Sirius XM or Warner Music, a company found in violation of provincial employment standards legislation may be required to pay fines, back wages, vacation pay, and statutory holiday pay for each applicable intern if it is determined that they are in fact an employee.

The exemptions under provincial employment standards legislation are very narrow. Therefore, employers may find themselves facing a legal battle akin to that experienced by Sirius XM if interns do not clearly fall within an available exemption. To protect your Company, always conduct a thorough review of the intern exemptions prior to hiring interns. Should you have any questions regarding your current or proposed internship program, please contact e2r® to speak with an Advisor.