

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

ARE UNPAID INTERNSHIPS LEGAL?

With the youth unemployment rate at nearly double the national average, Bank of Canada Governor, Stephen Poloz, suggested earlier this month that young workers struggling to find work should “*get some real life experience...even if it's for free.*”

The Governor's comments have reignited the debate about whether unpaid internships are exploitative or helpful to our younger generation of workers just breaking into the Canadian labour market. Recent reports indicate that as many as 300,000 Canadians are working for free.

Interning is one of a few methods for young and inexperienced workers to gain skills and contacts in their professional crafts. However, many former interns have recently initiated claims against their former employers, claiming among other things, that they are owed back pay for services that they ought to have been paid for.

In Ontario, unpaid internships are permissible only if the individual is performing services pursuant to a training program that meets the following six criteria:

1. The training is similar to that which is given in a vocational school;
2. The training is for the benefit of the intern;
3. The company derives little, if any, benefit from the activity of the intern;
4. The training doesn't take someone else's job;
5. The company is not promising a job at the end of training; and
6. The intern was told that s/he will not be paid for his/her time.

In addition to the above, employers do not have to pay students who are working under a high school co-op placement or under a program approved by post-secondary school.

If the internship does not fall within any of the above exceptions, the intern must be paid at least the Ontario minimum wage and is also entitled to, among other things, vacation pay, overtime pay, and public holiday pay. Failure to do so could result in penalties to employers, ranging from compliance orders, an order to pay back wages (up to \$10,000) and fines of up to \$50,000 for individuals and up to \$100,000 for companies. Directors of companies may also be personally liable for unpaid wages.

In April 2014, the Ontario Ministry of Labour, conducted an inspection blitz across the Greater Toronto Area (GTA) in an effort to curb illegal internships. The Ministry targeted in particular, the advertising, public relations, computer systems design, consulting services and information services sectors. The inspection blitz revealed that over 40% of employers with interns were in breach of the Ontario *Employment Standards Act, 2000 (ESA)*. Among 56 businesses inspected in the GTA, 37 compliance orders were issued, and several companies were ordered to pay back wages. The Walrus and Toronto Life, two high-profile magazines, were issued compliance orders by the Ministry of Labour which shut down their unpaid internship programs that have been in place for ten and twenty years, respectively.

In addition to heavier enforcement, lawmakers have proposed changes to employment standards legislation to build in greater protections for interns. In June 2014, Bill C-620, *Intern Protection Act*, a private member's bill, was introduced in the House of Commons. If passed, it would extend certain workplace protections to

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unpaid interns working in federally regulated industries that already exist for employees, including: health & safety protections, limits on excess hours, protection from sexual harassment. In addition, it would set out clear conditions for when unpaid internships are permissible.

Similarly, at the provincial level, *Bill 170, Employment Standards Amendment Act (Greater Protection for Interns and Vulnerable Workers)* 2014, was introduced in the Ontario Legislature in March 2014. If passed, interns would be deemed to be an 'employee' under the *ESA* for certain purposes, such as: hours of work, eating periods, statutory leaves and record keeping. In addition, interns would be entitled to 2 weeks of unpaid vacation and would also be entitled to reprisal protection.

Tips for Employers

Employers should review their unpaid internship program to ensure that it complies with the strict criteria set out in applicable employment standards legislation. If not, interns should be receiving at least their minimum employment standards entitlements, including receipt of minimum wage, overtime and vacation pay, among others.

LATEST NEWS

On November 21st, [Daniel Chodos](#) hosted a webinar for the [Human Resources Professionals Association](#) (HRPA) where he discussed how to Bolster Your Employment Agreements. Find out more [here](#).

[David Whitten](#) was asked for his comment in the [HR Reporter](#)'s article entitled: Ebola Liability with Ebola Panic. See what he had to say [here](#).

[David](#) discussed workplace harassment and bullying with a number of radio stations, including [Ed Hand of Ottawa's a.m.1310](#), [Barbara Kay of the National Post](#), [Moose FM in Bracebridge](#) and [Craig Needles at PULSE AM 980 in London](#).

On November 28th, [David](#) commented on the Liberal MP scandal and investigation. Read the full article [here](#).

[David](#) hosted a webinar for the [Human Resources Professionals Association](#) (HRPA) on December 2nd where he discussed how to distinguish between employee's and independent contractors. Find out more [here](#).

On December 2nd, [David](#) also provided his opinion on the [Huffington Post](#) article: Think Twice About What You Do After Work and What You Post on the Internet. Read all about it [here](#).

The [Federated Press' 9th Employer's Duty to Accommodate Conference](#) took place on December 12, 2014. David was asked to speak about Accommodation & Attendance Management. Find out more [here](#).

[Daniel Lublin](#) was asked back to [CTV News](#) to discuss the withdrawal of Jian Ghomeshi's \$55M against CBC. See his interview [here](#)

UPCOMING EVENTS

Don't forget, [David Whitten](#) will be speaking about employment agreements at the [Human Resources Professionals Association's](#) Annual Conference taking place in 2015 from Wednesday, January 21 - Friday, January 23 at the Metro Toronto Convention Centre, Toronto, ON. For more information please visit [HRPA's website here](#).


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