

Everything Has A Price: Interns And Volunteers May Not Be Free



Like baseball or time at the lake, an unpaid internship is a summer ritual for many young Canadians. Indeed, many employers turn to unpaid volunteers, practicum students and interns to bolster their workforce. While the attractiveness of engaging young and motivated individuals for no cost is understandable, employers should approach these unpaid positions with caution. They could expose the employer to liability. In many cases interns and volunteers could turn out to be employees.

Unpaid positions usually fall into three categories: volunteers, practicum students and interns. The British Columbia *Employment Standards Act* (the “ESA”) does not define these terms. It does, however, define the term “employee” broadly as including a person an employer allows, directly or indirectly, to perform work normally performed by an employee. It also defines “work” broadly as labour or services an employee performs for an employer. The characterization of any individual will depend upon the facts of each case.

The Employment Standards Branch (the “Branch”) treats volunteers, practicum students and interns differently, as follows:

- **Volunteers:** The Branch applies a narrow definition. They are persons who provide services for non-profit organizations without expecting compensation. The Branch deems that in a for-profit organization, any person allowed to perform work normally done by employees is considered to be an employee, not a volunteer. In deciding whether a volunteer is an employee, the Branch will consider whether:
 - the individual expects, or was paid, compensation;
 - whether the individual performs the same duties as other employees;
 - whether the employee works set hours; and
 - whether the individual is subject to the company’s employment policies.
- **Practicum Students:** A practicum is limited to hands-on training required by the formal curriculum of a post-secondary institution, and will result in a certificate or diploma. It involves the supervised practical application of classroom theory. It is not “work” for the purposes of the ESA.
- **Internships:** An internship is on-the-job training offered by an employer to provide practical experience. Unlike practicums, completing an internship does not result in a certificate or diploma. The Branch uses the same test for interns as with volunteers. If the intern provides services that are normally provided by employees, then he or she will be an employee.

The risk for employers is that if an individual is considered an employee by the Branch, then the employer could be liable for up to six months of back pay for that employee, vacation pay, severance pay, and could be subject to administrative penalties under the ESA. The employer could also face exposure to common law employment liability.

To minimize risk when engaging someone on an unpaid basis, employers should take the following steps:

- Before engaging the individual, assess the position and consider whether it should appropriately be considered an employee position. If so, consider alternatives such as a fixed term or part-time paid position (with an employment contract limiting obligations to the statutory minimums).
- Have a written agreement with the individual which clearly defines the terms of the relationship. The agreement should set out the fact that the position is unpaid.
- When engaging a practicum student, require the student to provide proof that the position is required for the individual's education course and proof of enrollment in the program.
- Provide unpaid individuals with as many options as possible regarding their duties and hours of work. Allow the flexibility for the individual to determine how he or she will provide the services. Avoid assigning them identical tasks as employees.
- Do not promise future employment arising from the unpaid position.
- Avoid providing the same benefits as employees.
- Apply only relevant policies (e.g. harassment, privacy), and not employee related policies (e.g. vacation).

Last Updated: July 5 2015

Article by [Bull, Housser & Tupper Labour & Employment Group](#)