Ministry Of Labour Goes After Unpaid Internships

Lately, unpaid interns have been on the Ministry of Labour's radar. In June 2013 a policy statement was published which reminded employers that most unpaid internships run afoul of the *Employment Standards Act, 2000* ("ESA"). I wrote about this policy statement in a previous post.

In April 2014, arising out of a few high profile incidents involving the *Walrus* and *Toronto Life* magazine, the Ministry announced an enforcement "blitz" meant to determine whether unpaid interns in certain sectors of the economy were truly "interns" and therefore exempt from the ESA. The results of that "blitz" have now been published. Some of the notable findings:

- The following sectors of the economy were targeted: advertising, public relations, computer systems design, consulting services and information services.
- The Ministry issued 37 orders to employers in those sectors.
- The Ministry recovered $48,543 from employers on behalf of individuals found to be employees (not interns) under the ESA.
- The amounts recovered were for minimum wage, vacation pay and public holiday pay.

Employer Takeaways

The findings substantiate that many interns are misclassified. The Ministry will likely consider them as employees. As employees, these individuals are entitled to the protections of the ESA, including payment of the minimum wage and vacation pay. Employers will be ordered to pay these amounts.

The Government is in the process of legislating protections for interns. Most notably, Bill 18, the *Stronger Workplaces for a Stronger Economy Act* (previously summarized here) would add interns to the definition of "worker" under the *Occupational Health and Safety Act.* Needless to say, this issue is not going away so employers need to remain vigilant to ensure ESA compliance.

In this regard, it is worth a reminder that the ESA will apply to most individuals in the workplace, regardless of whether the person has the "intern" title. There are really only two narrow exemptions. First, the ESA does not apply to work performed under an internship or co-op placement approved by a college of applied arts and

technology or a university. The second exemption applies where the intern is a "person receiving training" and all of the following conditions are met:

1. The training is similar to that which is given in a vocational school;
2. The training is for the benefit of the intern. The trainee must receive some benefit from the training, such as new knowledge or skills;
3. The person providing the training derives little, if any, benefit from the activity of the intern;
4. The intern's training does not displace the employees of the person providing the training;
5. The person providing the training must not promise the intern a job at the end of his or her training; and
6. The intern has been advised that he or she will not be paid for the time that he or she spends in training.

Most interns are unlikely to meet these conditions (especially #3).

Accordingly, given the results of the "blitz" and the Ministry's focus on the intern issue, employers should review their practices and policies on using unpaid labour and interns to ensure compliance. If an employer finds that an intern does not fit within the above exemptions, to reduce risk employers should consider a stipend or other form of payment that, at least, meets the minimum wage.