

Ontario Compliance Alert: MOL Revokes Unpaid Internships for Non-Student Trainees



Urgent Memo:

To: Ontario employers that provide unpaid internships for “trainees” that are NOT in an educational or professional training program.

Message: These arrangements are now illegal.

Chances are that this is the first time you’re hearing this. And that’s not surprising. The Ontario Ministry of Labour made the change with little fanfare back in October. Here’s the lowdown.

Previous Unpaid Internship Rules

The Ontario *Employment Standards Act* (ESA) requires employers to pay “employees” at least minimum wage. “Employee” is defined as including a person who receives training from an employer, if the skill in which the person is being trained is a skill used by the employer’s employees. This language is broad enough to include many, if not most internships.

But the ESA also includes specific exemptions for secondary and post-secondary and participants in a professional training program. And, until recently, there was also a fourth exemption (the Trainee Exemption): unpaid internships were allowed for “trainees” that were *not* part of a secondary, post-secondary or professional training program, provided that 6 conditions were met:

1. Training was similar to that provided in a vocational school;
2. Training was for benefit of the trainee;
3. The employer providing training derived little, if any, benefit from activity of the trainee while he/she was being trained;
4. The trainee didn’t displace any employees of the employer providing the training;
5. The trainee wasn’t given the right to become an employee of the employer providing the training; and

6. The trainee was advised that he/she she would receive no remuneration for time he/she spent in training.

New Unpaid Internship Rules

The Trainee Exemption has now been abolished. But there was no announcement. The only reason we know this is that the exemption doesn't appear in the revised ESA guidance the MOL issued "Employee Status" on October 29, 2019 (specifically, Section 6). Bottom Line: There are now only 3 forms of unpaid internships legal in Ontario:

- Internships for a secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled;
- Internships for an individual who performs work under a program approved by a college of applied arts and technology or a university; and
- Internships that provide training for certain professions, e.g., architecture, law, public accounting, veterinary science, dentistry, etc.

What To Do

As summer approaches, Ontario employers need to revisit their internship policies. If you're currently providing unpaid internships under the Trainee Exemption, you have to either eliminate them or restructure them so that the trainee receives at least the minimum wage.