

Ontario Explains When It's OK Not to Pay Interns



☒ They may not get compensation but unpaid interns do get “valuable experience.” Although a bit self-serving, the old saying is one many employers sincerely believe. At the same time, there’s also legitimate concern that “valuable experience” isn’t enough to deprive interns of the right to be paid for their services enjoyed by any employee under employment standards law. The key legal issue: Are unpaid interns actually “employees” under the ESA? Over the years, provincial governments have issued safe harbour rules excluding interns from “employee” status so that employers can offer unpaid internships without violating ESA laws. The new guidelines issued by the Ontario Ministry of Labour (MOL) are a fairly clear explanation of how unpaid intern rules work—at least in Ontario. And for the non-Ontario employers among you, there’s a summary of the internship rules in the other provinces.

The Guidance

When They Were Issued: The new guidance which came out in March 2013 is actually a revision of the guidance the MOL issued in June 2011.

Bottom Line: It’s not what you call the individual but how the arrangement actually works that determines whether an unpaid intern is an “intern” or an “employee” under the ESA.

The Training Factor: The guidance then goes into what *does* determine whether a person who works for free is an intern or an employee, starting with training:

General Rule: An individual is considered an employee rather than an intern if he/she receives training in the skills that the employer’s other employees use.

Exception: The person who receives this training is an intern if all 6 of the following conditions are met:

- The training is similar to the training or instruction the intern would get in a vocational school;
- The training is for the intern’s benefit, e.g., it provides new knowledge or skills;
- The employer derives little to no benefit from the intern’s activity while training is taking place;
- The intern doesn’t displace or take the job of another of the employer’s

employees;

- The intern isn't promised a job or given the right to become an employee at the end of the training; and
- The intern is advised that he/she won't be paid for the time spent in training.

The College/University Factor: The ESA doesn't apply, the guidance continues, to individuals who perform work under a program approved by a college of applied arts and technology, or a university. This rule is necessary, the MOL explains, to encourage employers to provide students enrolled in a college or university program with practical training to complement their classroom learning.

Unpaid Internships in Other Provinces

If you're in Ontario, the MOL guidance should enable you to keep your unpaid internship arrangements out of ESA harm's way. Unfortunately, not all jurisdictions have been as clear about how their ESA laws apply to unpaid interns. In BC and Québec, the rules are fairly clear. But in the other jurisdictions, the government hasn't done a good job of whether interns are "employees" entitled to receive wages for their work.

[Click here](#) find out what we *do* know about the rules governing unpaid internships in the other provinces (and federally).