

You Make the Call: Are Unpaid Internships Legal?



SITUATION

Every summer, the Hiram Young marketing firm hires students from the local art school to work as graphics designers. The students don't get paid but they gain valuable experience in their field. Before joining, each student has to sign a contract agreeing to follow company policies, schedules and work protocols. They also acknowledge their agreement to work for free as "interns" and expressly waive their rights to minimum wages under the province's employment standards law. The internship program has been around for years, is well regarded and students eagerly compete for slots.

YOU MAKE THE CALL

Is the internship program legal?

1. No, because the students are actually employees for purposes of employment standards
2. Yes—even though the students are employees they voluntarily waived their minimum wage rights
3. No, because all unpaid internships are illegal in Canada
4. Yes, because unpaid internships are still allowed for students

ANSWER

1. The internship is illegal because the students are employees and thus have to be paid under employment standards laws.

EXPLANATION

This scenario, which is based on an actual case, illustrates the rules on unpaid internships. First and foremost, unpaid internships are usually illegal. That's because employment standards laws require employers to pay their "employees" wages. And while definitions vary slightly, most jurisdictions define "employee" broadly as any person that performs work for an employer and where the employer:

- Exercises a high degree of control and direction over the work; and
- Gains an economic advantage from that work.

The student graphic designers in this scenario clearly satisfy these criteria.

The other key point is that employers can't evade their minimum wage or other employment standards duties to employees by calling them "interns." Employment standards obligations are based on a person's actual functions, not his/her title. So, A is the right answer.

WHY WRONG ANSWERS ARE WRONG

B is wrong because, the contractual provision purporting to waive the students' minimum wage rights is totally void and unenforceable. Reason: Employers can't contract out of their minimum wage and other employment standards duties to employees.

C is wrong because most jurisdictions' employment standards laws do have exceptions allowing for some forms of unpaid internships that meet specific conditions set out in the law.

D is wrong but sounds right because most of the exceptions permitting unpaid internships pertain to students. But the exception is framed very narrowly and usually requires an official program link between the school and employer, something the Hiram Young internship program clearly lacks.

(Click here to see the unpaid internship rules in your jurisdiction)