

Hiring Students This Summer? The Ministry of Labour is Watching

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Between May and August 2014, the Ontario Ministry of Labour (“MOL”) will perform a province-wide summer safety “blitz” of workplaces with young workers (aged 14 to 24) and/or new workers who have been in a job for less than six months. If a similar blitz last year is any indication, these inspections will most frequently occur in the manufacturing, municipal (*e.g.* parks and recreation), farming, retail, tourism/hospitality, long-term care home and food services industries.

MOL inspections can be intrusive, inconvenient and disruptive to daily operations. Inspections can also be expensive when they interrupt workflow or result in a stop work orders and, in some cases, a fine. To minimize these negative impacts, an employer should be aware of its obligations to new and young workers and take reasonable steps to prevent an accident at its workplace.

Old Enough to Work?

MOL inspectors will be on the lookout for underage workers. While the minimum working age in Ontario is 14 years for most types of work, regulations made under the *Occupational Health and Safety Act* (“*OHSA*”) have specified higher ages for certain types of work.

| Type of Work | Minimum Working Age |
|--|----------------------------|
| Stores, Offices or Arenas | 14 |
| Factories or Repair Shops | 15 |
| Logging Operations & Construction Projects | 16 |
| Underground Mines & Window Cleaning | 18 |

Every employer should ask its job applicants whether they have reached the age of 18. If an applicant is under the age of 18 it is then permissible to ask for their specific age. An application form is often the best way to inquire, since the applicant’s response will be preserved in writing.

Occupational Health and Safety

The *OHSA* requires an employer to take every reasonable precaution to ensure the protection of its workers, including young workers. This includes ensuring equipment is well maintained, and workers are properly instructed and supervised. Failure to protect workers can result in orders, significant fines and, in rare cases, imprisonment.

While the “every reasonable precaution” standard applies equally to all workers, special care should be taken to ensure new and young workers, who are less familiar with the workplace and

industry, are provided with safety information, instruction and supervision both when they start a job and throughout the summer.

Potentially Higher Costs for Workplace Accidents Involving Students

Workplace accidents are sometimes unavoidable. If the Workplace Safety and Insurance Board (“WSIB”) finds an injury to be compensable (*i.e.* it occurred “in the course of employment”), costs may be higher than usual when a student is injured. This is because the WSIB has a broad discretion to accept “[any] information considered appropriate” when assessing a student’s loss of earnings. For example, if the student’s injuries delay the completion of his or her education, the WSIB may reimburse any extra tuition payments or related expenses that are incurred. These additional claims will negatively affect the employer’s experience rating and can lead to a costly surcharge.

Unpaid Interns: The Hidden Costs of *Free Labour*

Unpaid internships have been the hot topic as of late. While a common way for students to gain summer workplace experience, the MOL is currently engaged in a blitz to shut down internship programs. The *Employment Standards Act, 2000* (“*ESA*”) defines “employee” as including an individual who “receives training from a person who is an employer”; and an “employee” is entitled to be paid for work done. All of which means, as a general rule, an intern or trainee cannot legally provide services for free. There are limited exemptions under the *ESA* such as a secondary student performing work under a work experience program authorized by a school board and an individual who performs work under a program approved by a college of applied arts and technology or a university. In almost all other circumstances, an unpaid internship will be contrary to the *ESA*.

Closing Note

Summer is nearly here, and employers will be hiring student workers and interns to meet seasonal needs. Accompanying this seasonal recruitment is heightened MOL scrutiny. While there is no magic spell to keep the MOL at bay, there are steps an employer can and should take to prepare and minimize risk, including:

- Become familiar with its obligations under the *OHSA* and *ESA*.
- Conduct an honest and thorough workplace self-audit to identify areas of risk.
- Take preventative measures and/or corrective action *before* the MOL comes knocking.

If you’re not sure where to start, or need a little help, please contact a member of the Sherrard Kuzz LLP team.

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