

Construction owners must be aware of summer student safety



In November 2014, the Ontario Government passed Bill 18, the *Stronger Workplaces for a Stronger Economy Act, 2014*.

Bill 18 amended several key pieces of labour and employment-related legislation with a view to protecting "vulnerable" and "precarious" workers, including young and new workers.

As construction employers enter the traditionally busy summer months, and consider bringing on students as extra help at job sites, it will be important to understand and appreciate the new health and safety protections owed to young workers under Bill 18. Failure to take steps necessary to protect young workers can lead to increased Ministry of Labour scrutiny, disruptive stop-work orders, sizable fines, and in extraordinary cases, imprisonment.

Bottom line is this: the *Occupational Health and Safety Act* (OHSA) now takes a very expansive view of the definition of "worker", including an unpaid intern, co-op student, other student on a school-approved work placement, and a person who otherwise receives training from an employer even if they do not fall within the definition of "employee" under the *Employment Standards Act, 2000* (ESA). It no longer matters whether a person is paid, unpaid, or simply receives an honorarium or stipend. An employer now has a much wider scope of responsibility to ensure the protection of persons performing work for it.

Students are "workers" too — recent amendments to the OHSA

Prior to Bill 18, a co-op student or person engaged in an unpaid training program did not fall within the definition of "worker" under the OHSA, and an employer was not legally obligated under the OHSA to take any steps for their protection. A significant gap existed in the law, which was highlighted by the workplace fatalities of three co-op students within a 10-month period in 2014.

Bill 18 closed this gap and expanded the definition of "worker" to include: (i) a secondary school student who performs unpaid work as part of a work experience or co-op program authorized by the school board; (ii) a university, college

or other post-secondary student who performs unpaid work under a program approved by the school; and (iii) a person who receives unpaid training from an employer similar to that provided by a vocational school.

What's next? Bill 64 is coming down the pipe

In February 2015, Bill 64, *Protecting Interns and Creating a Learning Economy Act, 2015*, passed a second reading at Queen's Park and moved one step closer to becoming law. As with Bill 18, Bill 64 would further expand the obligations owed to an unpaid co-op student, intern or trainee, including the following amendments:

- **Creation of an "advisory council on work-integrated learning"** The mandate of this committee will be to make recommendations on ways to raise awareness of, and increase the number of, work-integrated learning opportunities (e.g. co-op placements).
- **Mandatory posting of information concerning rights and obligations** Every employer will be required to distribute and provide employment-related information to co-op students and other persons under a training contract, including a review of what parts of the ESA apply to them, and the terms of the individual's employment, including the duration of the employment, hours of work, and a general description of the tasks to be performed.
- **Expansion of employment standards entitlements** Various parts of the ESA would be expanded to apply to co-op students and other persons under a training contract, including hours of work and eating periods, leaves of absences, restrictions against the use of a lie detector test, protection from reprisals, unpaid vacation time, and access to Ministry of Labour complaint and enforcement processes.

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