

Beward the Perils of Using Unpaid Interns

Quoting Sherrard Kuzz LLP

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With so many young people hungry for job opportunities – and so many employers under pressure to contain costs – some may see unpaid internships as a win-win solution.

But there may be costs associated with seeking free help, including potential legal risks, if your internship arrangements fail to pass muster with employment legislation.

The risks of using unpaid interns have been in the spotlight lately following a ruling by a U.S. District Court judge that found Fox Searchlight Pictures violated labour laws when it used unpaid interns for basic production tasks on one of its films. Other U.S. employers, including Condé Nast and Hearst Corporation are currently facing similar lawsuits and experts suggest this may be just the beginning of this type of legal action.

Meanwhile, here in Canada, the University of Toronto Students' Union has also been sounding the alarm over unpaid internships. In a recent letter to the Ontario Ministry of Labour, the U of T Students' Union suggests that across Canada each year, more than 300,000 students and young workers are "illegally misclassified" as interns, trainees and non-employees.

When it comes to using unpaid interns, "what may seem like a good idea, benefitting both intern/trainee and organization, may create undue risk for the organization," Sherrard Kuzz LLP notes in a recent employment and labour law update.

"The legal risk to an organization of an unpaid internship is a claim under applicable employment standards legislation for unpaid wages. The public relations risk to an organization can be equally if not more damaging."

It notes that historically, an unpaid internship represented "a legitimate and highly sought after training opportunity en route to paid employment," traditionally, though not exclusively, in industries such as journalism, broadcasting or fashion.

In the current economic climate, however, "the prevalence of unpaid internships has greatly increased and their character changed," observes Sherrard Kuzz. "This has caused some to argue that the modern internship represents little more than corporatized slavery."

Sherrard Kuzz points out there are no definitions of "intern" or "trainee" under the Ontario Employment Standards Act. There are, however, "limited exemptions" under the act which "carve out unpaid internships" – such as a secondary school student performing work under a work experience program authorized by a school board or a student who performs work under a program approved by a college or university.

"Apart from these statutory exemptions, there are circumstances in which an intern/trainee can be 'trained' without an organization incurring an obligation to pay wages," adds Sherrard Kuzz. "In these cases the experience for

the intern/trainee must provide little, if any, workplace benefit to the organization and cannot be a stepping stone toward the intern's future paid-employment with the organization.”

It cautions that, “aside from putting every intern and trainee on the payroll, there is no guaranteed way to avoid the risk associated with these unpaid positions.”

And these types of positions may be coming under greater scrutiny. For example, the University of Toronto Students' Union is calling for changes to the Ontario Employment Standards Act to “prohibit all forms of unpaid labour that benefits employers.”

The question remains as to what types of legal action we may see here in Canada in light of the recent U.S. developments.

But beyond the legal risks, it's also important to consider the unintended messages an organization might send through its use of unpaid interns. If an organization asserts that it seeks to fairly recognize and reward employee contributions, it may have a difficult time explaining why it also seeks to engage free labour.

In the end, there may be such a thing as unpaid help. But ultimately, there's no such thing as a free lunch, because even that which seems to be free may come with a price that will eventually have to be paid.

Sherrard Kuzz LLP is one of Canada's leading employment & labour law firms representing the interests of employers. Sherrard Kuzz LLP can be reached at 416.603.0700 (Main), 416.420.0738 (24 Hour) or by visiting www.sherrardkuzz.com.

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