



## ***PAID VS. UNPAID INTERNSHIPS – WHO REALLY BENEFITS?***

There are several indications that, despite various employment standards legislation in both the U.S. and Canada, some organizations are taking advantage of the current economy to introduce a growing number of “unpaid internships” or poorly paid internships. Recent graduates from certain post-secondary institutions, including those specializing in business management and law, are so desperate as to take on non-paying internship positions. More recently, even jobless older workers are considering unpaid internships as a means to obtaining future employment and being retrained. Indeed, internships are perceived by many as a means to eventually securing a full-time permanent position in organizations. Some advocates also believe that internship experience has now become a near necessity on any competitive entry level résumé. <sup>1</sup>

With job openings particularly scarce for young people as potential or new graduates, there is growing evidence that the number of unpaid internships has climbed in recent years, notably in the U.S. Indeed, this has led federal and state regulators there to worry that employers increasingly are illegally using such internships as free labour.

*Many regulators say that violations are widespread, but that it is unusually hard to mount a major enforcement effort because interns are often afraid to file complaints. Many fear they will become known as troublemakers in their chosen field, endangering their chances with a potential future employer. <sup>2</sup>*

One of the unfortunate outcomes of the current economic climate is that there are fewer jobs to go around for students. Summer and graduating students who have relied on summer jobs for experience and training are finding fewer opportunities. To solve this problem, many students and graduates are reaching out to organizations to offer their services on a gratuitous basis as unpaid “interns.” However, a serious problem surrounding unpaid interns is they are often not considered “employees”. Thus, they are seen as not being protected by employment and occupational health and safety laws.

For example, in 2008, the [National Association of Colleges and Employers](#) found that 83 percent of graduating students in the U.S. had held internships, up from 9 percent in 1992. However, of the hundreds of thousands of students who hold internships each year; some experts estimate that one-fourth to one-half are unpaid. <sup>3</sup>

*But employers beware — the relationship may not be that beneficial. In fact, these relationships raise all sorts of legal issues: Could a company be ordered to pay an unpaid intern wages? What are a company’s obligations to the unpaid intern for workers’ compensation insurance? What if an unpaid intern commits an illegal act while “working” for a company? <sup>4</sup>*

<sup>1</sup> *Unpaid Work, but They Pay for Privilege:* Gerry Shih, New York Times, August 9, 2009

<sup>2</sup> *Growth of Unpaid Internships May Be Illegal, Officials Say.* Steven Greenhouse, New York Times, April 2, 2010

<sup>3</sup> Ibid:

<sup>4</sup> *Beware of Unpaid Intern in Canada:* Sara Parchello, The Employment Law Post, Fasken Martineau, June 15, 2009

## ***What do we mean by an internship?***

An internship is a pre-professional experience that provides an opportunity to gain relevant knowledge and skills prior to starting out in a particular career field. Internships are relatively short term in nature with the primary focus on getting some on-the-job training. One takes what's learned in the classroom and applies it to the real world. Internships provide practical experience to those looking to explore or gain the relevant knowledge and skills required to enter into a particular career field. Interns generally have a supervisor who is delegated to assign, oversee and evaluate the intern's work. Types of internships include:

**Paid Internships:** Paid internships offer students a way to gain relevant knowledge and skills required to succeed in a specific career field while making some money through an hourly wage, salary, or stipend over the course of the internship.

**Internships for Credit:** Internships for credit provide students with academic credit to be included on their college transcript. Usually a faculty sponsor will work alongside a site supervisor to evaluate the student's overall progress over the course of the internship.

**Internships for Non-Profits:** Non-profit internships involve working for organizations such as charities, universities, government agencies, religious organizations, and some health care facilities. Such internships are usually unpaid.

**Summer Internships:** Summer internships offer students an opportunity to get some concrete work experience and be able to try out what it's actually like working in a particular career field. Many summer internships are paid. A number of summer internships are also available in the world of non-profits.

**Internships Not-for-Credit:** Students not in need of academic credit can do internships where they do not need to complete paperwork or meet academic guidelines set by their college.

**Differences with Co-operative Education Opportunities:** The main difference between an internship and a co-op experience is the length of time. While internships generally last anywhere from a few weeks to several months, co-op's normally last one or more years. Usually students will attend classes and work on their co-op simultaneously, or they may do their co-op during winter and/or summer breaks. Co-ops and internships are both excellent ways for students to gain valuable knowledge and skills in their field of interest. In addition, they offer an opportunity to network with professionals already working in the field. As part of a co-op program, participants are normally given accreditation towards completion of their degree program.

## ***What are the benefits to organizations and participants in having internships?***

*Organizations will benefit by:*

- ☞ having an opportunity to expose their operations and working conditions to potential future employees;
- ☞ obtaining youthful and current generational insights into their client universe, general operations and working conditions;
- ☞ improving their corporate image through the provision of work opportunities to young people within the community and within relevant fields of study; and
- ☞ having a more effective means than a job interview to really get to know new candidates, and potentially provide the organization with early dibs on promising graduates.

***“Healthier organizations mean more productive employees.”***

*Interns will benefit by:*

- ☞ gaining valuable and practical work experiences in their field of study which may help them to contribute to future employment and profession decisions;
- ☞ helping young people and jobless older workers to learn new skills, bolster résumés and network,
- ☞ having internships blossom into full-time paying jobs; and
- ☞ developing a greater appreciation for a particular industry, its clients and working conditions.

### **What should organizations avoid in providing internships?**

Organizations should avoid anything that might be perceived as exploiting internships for all the wrong reasons. For example, organizations should not use interns to fulfill repetitive, menial and unrewarding tasks, such as filing or knocking on doors. Work without value simply demeans both the intent of the internship and the value placed on the intern. Also, any mismatch between the experience sought and what's actually being offered will most likely lead to people becoming frustrated and disappointed — not a good way to encourage potential new employees to join an organization on a permanent basis.

*Employers should carefully plan any internships — paid or unpaid — to ensure the experience is meaningful, rather than strictly menial, Drake's Mr. Weber says. "If you want to attract the right person, you'd better give them the right opportunity. Don't bring them in and not have a clue what you'll do with them ... Give them concrete roles, where they can have absolute results that make an impact." <sup>5</sup>*

Recognizing the realities of the current economy for many new graduates, underemployed persons and jobless older workers, there may be some arguments for the provision of “unpaid internships”. However, organizations should be very careful not to abuse their use. The danger is that unpaid positions in the workforce (whether billed as volunteer positions, internships, etc.) most likely will not become full-time jobs. Unpaid interns are often simply replaced with new unpaid interns. In addition, in the end run, the use of unpaid interns for tasks normally fulfilled by paid workers could prove to be detrimental both to the organization and its workforce.

Failure to provide adequate and meaningful supervision to interns is a serious concern. There needs to be a lot of direct contact with a supervisor in the field. Let's face it, there isn't a lot that an untrained intern can do alone. Unfortunately, some organizations may believe that there is some particular work that could be done by a paid or unpaid “intern” rather than to hire someone. But if there's no primary person or mentor to learn from, then there's no experience to be gained — or at least nothing that couldn't be learned from simply applying what the intern already knows on his or her own.

### **What kinds of legal protections are there for interns?**

#### **United States**

The recently issued [New Federal Guidelines on Internships](#) could affect the number of internships organizations offer in the U.S. Based on the [Fair Labor Standards Act](#), which was created to ensure that all workers be paid at least a fair minimum wage, the federal government is now cracking down on unpaid internships to discourage employers from the practice of having interns work for free.

According to The Department of Labor, the following six legal criteria must be applied when making a determination if an internship is required to be paid: <sup>6</sup>

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment.

<sup>5</sup> *Unpaid internships still worth it:* Tavia Grant, Globe & Mail, April 09, 2009

<sup>6</sup> Wage & Hour Division, U.S. Department of Labor

2. The internship experience is for the benefit of the intern.
3. The intern does not displace regular employees, but works under close supervision of existing staff.
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded.
5. The intern is not necessarily entitled to a job at the conclusion of the internship.
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

### **Canada**

Unlike the U.S., Canada does not have federal legislation with the power to deem unpaid interns (or trainees) as employees. Instead, Canadian employers must consult the applicable federal, provincial or territorial [employment standards legislation](#) to determine if an unpaid intern is an “employee.” The fact that someone is not paid is not the only indicator that someone is not an employee. If someone “looks” and “acts” like an employee, there is a good chance the individual is an employee.<sup>7</sup>

For example, in Ontario an intern is an “employee” if he or she is being trained in a skill used by the employer’s other employees, unless the intern:

- ☞ is receiving training similar to training given in a vocational school;
- ☞ benefits from the training and the employer doesn’t;
- ☞ doesn’t replace other “employees”; and
- ☞ doesn’t automatically become an “employee” when the training has finished.

Organizations need to keep in mind that just because you call someone an unpaid intern, doesn’t mean he or she is not legally an employee, with all the legal rights that it would entail.

### **Recommendations when taking on interns.**

Sara Parchello in *The Employment Law Post*, recommends that organizations consider the following when bringing in unpaid interns:<sup>8</sup>

- ☞ Communication and expectations should be as clear as possible. Consider drafting a simple letter to the intern setting out that he or she is not an employee, but an unpaid intern. The letter should also set out the unpaid intern’s role and term with the organization, as well as the expectation that he or she will abide by all organizational policies and procedures, especially those dealing with harassment, discrimination and workplace health and safety.
- ☞ Consider expanding orientation programs to all interns.
- ☞ Make sure unpaid interns are trained properly, especially on health and safety, harassment and discrimination policy and procedures.
- ☞ Ensure the unpaid intern is aware that any policy breaches could result in the termination of the relationship before the term ends.
- ☞ Be as upfront with the intern as possible about future job opportunities. Don’t oversell the likelihood that the role will become a paid role if there is really no chance of that happening.

### **Recommended Web Sites:**

- ◆ About.Com – Internships: <http://internships.about.com/>
- ◆ Wage & Hour Division – U.S. Department of Labor: <http://www.dol.gov/whd/regs/compliance/hrq.htm>
- ◆ Federal Public Sector Youth Internship Program – Service Canada: [http://www.servicecanada.gc.ca/eng/sc/youth/pdf/fpseb\\_en\\_01\\_05\\_08.pdf](http://www.servicecanada.gc.ca/eng/sc/youth/pdf/fpseb_en_01_05_08.pdf)

<sup>7</sup> *Beware of Unpaid Intern in Canada*: Sara Parchello, *The Employment Law Post*, Fasken Martineau, June 15, 2009

<sup>8</sup> Ibid:

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