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Hiring students this summer? Here's what employers need to know

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As the school year winds down, many students will be looking for summer jobs in the construction industry and many construction employers will be looking to add extra help during traditionally busy months.

However, before allowing a student to trade his knapsack for a hard hat, a construction employer should be aware of its obligations to young workers and take reasonable steps to prevent accidents at its workplace. Failing to do so may lead to increased Ministry of Labour ("MOL") scrutiny, disruptive stop-work orders and, in some instances, a sizable fine.

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Old Enough to Work?

While the minimum working age in Ontario is 14 years for most types of work, a regulation made under the Occupational Health and Safety Act ("OHSA") specifies that no person under the age of 16 can be employed or be present at a construction project while work is being performed.

To determine the age of an applicant, it is legally permissible to ask whether he has reached the age of 18. If the applicant is under the age of 18 it is permissible to ask for his 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. The 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 a young worker, often less familiar with the workplace and industry, is provided with safety information, instruction and supervision when he starts a job and throughout the summer.

Potentially Higher Costs for Workplace Accidents Involving Students

Workplace accidents are sometimes unavoidable. If the 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 an injured worker's loss of earnings. If that worker is a high school student, for example, and the injuries delay the completion of his education, the WSIB may reimburse any extra tuition payments or related expenses 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

The Employment Standards Act, 2000 ("ESA") defines "employee" to include 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 construction employers will be hiring student workers and interns to meet seasonal needs. To ensure the protection of its workers, and to keep the MOL at bay, there are steps an employer can and should take, including:

Become familiar with the employer's obligations under the OHS 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 come knocking.

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

Matthew Badrov is a lawyer and Andrew Ebejer is a student-at-law with Sherrard Kuzz LLP, one of Canada's leading employment and labour law firms, representing management.

To learn more and/or for assistance about employer obligations when it comes to young workers visit www.sherrardkuzz.com or call 416-603-0700.

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