



Hiring students this summer? Make sure you know the rules

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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 are most likely to occur in the manufacturing, municipal (parks and recreation), farming, retail, tourism/hospitality, long-term care home and food services sectors.

While we are not aware of a similarly focused blitz in other Canadian provinces, it makes perfect sense that the various provincial regulators will be interested in the safety of young workers during the busy summer months. In Alberta, for example, the Employment Standards branch has teamed up with the Occupational Health and Safety branch to launch a broadly based "Work Right" educational campaign designed to promote awareness throughout the province.

Inspections can be intrusive, inconvenient and disruptive to daily operations. Inspections can also be expensive when they interrupt workflow or result in 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 protect the health and safety of its workers.

Old enough to work?

The minimum age to work — both generally and in a specific industry — will vary from province to province, so every employer should ensure it is aware of provincial standards applicable to its operations. Not only do these standards provide a minimum working age, they also frequently place restrictions on the number of hours a young employee can work and the required level of supervision.

In Ontario, for example, while most employees must be at least 14 years of age, regulations made under the Occupational Health and Safety Act (OHSA) have specified higher ages for certain types of work. For example, an employee must be at least 15 years of age in order to work in a factory or repair shop, 16 years of age to work on a construction project or in a logging operation and 18 years of age to work in an underground mine or in window cleaning.

In British Columbia and Alberta, the minimum working age is 12, though some industries, such as recorded film or television, permit workers even younger than that. On the other hand, industries such as construction, mining, forestry, and hotels and restaurants frequently have age requirements higher than the baseline standard. It is also very common that written parental consent or a permit from the applicable employment standards branch is a requirement for hiring a young worker.

Accordingly, every employer should ask its job applicants whether he or she has reached the minimum age for the position at issue. In Ontario it is permissible to simply ask if the applicant is 18 years of age. If an applicant is under the age of 18 it is then permissible to ask for the specific age. An application form is often the best way to inquire, since the applicant's response will be preserved in writing.

Duty to protect

Occupational health and safety legislation across the country 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 an order, 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.

Accidents involving students

In Ontario, if the Workplace Safety and Insurance Board (WSIB) finds an injury to be compensable (such as 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. Similar remedial discretion is found in most of the workers' compensation regimes across Canada.

Unpaid interns

Unpaid internships have been a hot topic as of late. While a common way for students to gain summer workplace experience, in most Canadian jurisdictions an unpaid internship is contrary to employment standards legislation unless it falls within one of a few specific exceptions.

Ontario's MOL is currently engaged in a high profile blitz to shut down internship programs. The Ontario 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.

Summer is nearly here and employers will be hiring student workers and interns to meet seasonal needs. Accompanying this seasonal recruitment is heightened scrutiny of the various ministries of labour. While there is no magic formula to keep the regulators at bay, employers should follow these steps to minimize risk:

- Become familiar with their obligations under the applicable provincial health and safety and employment standards legislation.
- Conduct an honest and thorough workplace self-audit to identify areas of risk.
- Take preventative measures or corrective action before the regulator comes knocking.

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