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K.C. Wysynski is an associate in the Workplace Law and Education Law groups with SimpsonWigle LAW LLP. The Workplace Law group provides advice and representation to clients on all matters arising from the employment relationship, including restructuring and downsizing, policy development, human rights, disability management, collective bargaining, grievance arbitrations, workplace safety and insurance and occupational health and safety matters.

# Q

I own a printing company. My friend's son just completed a program in Graphic Design and would like to intern for free doing advertising layout to gain experience. We need extra help for the summer and if things work out, we may have room to hire him in September. My business partner is concerned this may be unlawful. What are the rules around unpaid work placements?

# A

Your business partner is right to be skeptical. In this case, a paid arrangement is warranted. The *Employment Standards Act, 2000* only permits individuals to perform services or receive training without compensation when working either under a college of applied arts and technology or university approved program or under a training program that meets the following requirements:

1. the training similar to that which is given in a vocational school;
2. the training is for the benefit of the individual;
3. the party providing the training derives little, if any, benefit from the individual's work;
4. the individual does not displace employees;
5. the individual does not have an immediate right to become an employee of the party providing the training; and
6. the individual is informed there will be no remuneration for the time spent in training.

Misclassifying an individual as an intern can have costly consequences, including being required to make retroactive payments to the "intern" for all hours of work, vacation pay and public holiday pay. It also can lead to serious consequences under health and safety and workers' compensation legislation in the event of an accident leading to injury. The creation of an unpaid position should be reviewed carefully with reference to all applicable legislation.



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