



**The *Employment Standards Act, 2000* –
Reform Guidance**

Ontario Economic Development Society

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Acknowledgements

This submission reflects the input received by the Ontario Economic Development Society over the course of several months. The recommendations herein reflect the consensus positions of our membership.

About the Ontario Economic Development Society

Incorporated in 2014 and operating since 2013, the Ontario Economic Development Society (OEDS / OntarioEDS) serves as the politically neutral voice of the millennial generation. Our mission is to support economic growth in Ontario by advancing efficient and sustainable economic policies to the Ontario Government on behalf of a specially selected membership of ten individuals dedicated to economic development research.

The team at OntarioEDS is devoted to working with government through public consultations to help discover better business policies. As a team between 18-35 years old, we represent issues that would otherwise go unnoticed by key economic stakeholders in the province.

OntarioEDS is the future shaping foresight for efficient and sustainable economic policy development.



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Special Advisors C. Michael Mitchell and Hon. John C. Murray,

Thank you for the opportunity to respond to the Ontario Ministry of Labour's Changing Workplaces Review Consultation Paper, released in May 2015.

We look forward to helping you gain insight into the employment issues of a traditionally unheard economically vulnerable group – Ontario youth. We hope that this submission serves as a complimentary aid to facilitate a comprehensive understanding of employment issues in the 21st century for the entry level demographic of emerging professionals.

New stresses have been placed on new and expected graduates with rising tuition fees and various aspects of globalization that have created an increasingly competitive labor market. With the advent of exploited interns in Toronto that required a crackdown by the Ministry of Labor in March, 2014 and Bank of Canada president, Stephen Poloz, advising students to volunteer in order to secure better job prospects it is clear that new regulation is needed.

Notably, the scope of this reform guide will only consider amendments to the *Employment Standards Act, 2000* and not the *Labour Relations Act, 1995*.

SUMMARY OF RECOMMENDATIONS

The following represents the consensus recommendations of the Ontario Economic Development Society executive team in response to the Ministry of Labour’s review of the *Employment Standards Act* specifically.

Employment Standards Act, 2000 – Unpaid Work

Recommendation 1: Create a definition of internships versus volunteering as well as independent contractors versus employees.

Recommendation 2: Require organizations and unpaid workers to create a Memorandum of Understanding when commencing any such working arrangement.

A Memorandum of Understanding would outline the following essential elements:

- Whether or not there is a prospect of a job opportunity after completion of an internship / volunteer position.
- The amount of hours the organization requests from the volunteer on weekly basis as well as the expected length of time of the unpaid work arrangement before the Memorandum is renewed.
- The criteria for the unpaid worker to meet in order for a reference to be provided.
- If any compensation will be provided to the unpaid worker (i.e., transit expenses, lunch, etc.);
- Any additional case-specific clauses that would clarify the working relationship.

Recommendation 1

Create a definition of the types of unpaid work: internships versus volunteering.

At present, volunteers are susceptible to exploitation as result of the current legal framework:

Volunteers are not covered by the [Employment Standards Act, 2000](#). Under the [Workplace Safety & Insurance Act, 1997](#), some volunteers, such as volunteer firefighters are covered, but most are not. Under the [Occupational Health and Safety Act](#), a worker is defined in part as being “person who performs work or supplies services for monetary compensation”. Although this definition does not include volunteers,

employers still have some responsibility for the health and safety of people visiting or helping out in their workplaces.¹

This is a vital issue because the *ESA* is the only statute that could afford protection to unpaid workers. Creating definitions of an internship versus a volunteer would provide greater clarity to employers and individuals, namely students, looking towards entering this type of working arrangement.

Recommendation 2

Require organizations and unpaid workers to create a Memorandum of Understanding when commencing any such working arrangement.

The proposed reform would foster a better understanding for both organizations and unpaid workers as well as officially afford the latter *some* protections under the Act. Evidently, minimum wage and an extensive number of provisions would not apply to unpaid workers. Safe work environment clauses however, among other provisions deemed reasonable by the Ministry of Labor as well as newly drafted unpaid worker specific provisions would apply.

“In 2012, the unemployment rate of youths aged 15 to 24 was 14.3%, compared with a rate of 6.0% for workers aged 25 to 54 and workers aged 55 or older (Chart 1)”²

Impetus for protecting youth and all volunteers under the *ESA* is also found when considering that the Bank of Canada promoted volunteering as a viable option, specifically for youth, in 2014.

¹ Ontario Ministry of Labour, online: <<http://www.statcan.gc.ca/pub/11-626-x/11-626-x2013024-eng.pdf>>.

² Statistics Canada, “Unemployment Dynamics Among Canada’s Youth” André Bernard, Analytical Studies Branch at 1 online: <<http://www.statcan.gc.ca/pub/11-626-x/11-626-x2013024-eng.pdf>>.

“Volunteer to do something which is at least somewhere related to your expertise set, so that it is clear that you are gaining some learning experience during that period”.³
– Stephen Poloz, Governor of the Bank of Canada.

Conclusion

At its essence, the policy reform requested would require organizations to create a memorandum of understanding for the work they expect of unpaid workers. This would protect both parties by providing an empirical understanding of expectations in the arrangement. The memorandum would do well to outline the skills, learning experience, any type of compensation (i.e., lunch / transit) and other benefits afforded to the volunteers. It would also protect organizations from legal action against unpaid workers who have signed a memorandum that demonstrated both parties understood the working arrangement.

SOURCES CONSIDERED BEFORE CREATING THIS REVIEW

The Ministry of Labor reviews the *Employment Standards Act*, 2000.
http://www.labour.gov.on.ca/english/about/pdf/cwr_consultation.pdf

The Ontario Chamber of Commerce reviews the *Employment Standards Act*, 2000.
<http://www.occ.ca/wp-content/uploads/2013/05/Changing-Workplaces-Review-Submission.pdf>

Law Commission of Ontario reviews the *Employment Standards Act*, 2000.
<http://www.lco-cdo.org/en/vulnerable-workers-call-for-papers-vosko-tucker-thomas-gellatly-sectionII>

Ontario Human Rights Commission policy review related to Employment Law.
<http://www.ohrc.on.ca/en/search/site/ESA>

Justice Department Law School partnership program reviews related to Employment
http://www.justice.gc.ca/eng/rp-pr/other-autre/rr00_3/p5b.html

Canadian Lawyers Magazine
http://www.canadianlawyermag.com/5729/Shaking-up-labour-laws.html?utm_medium=email&utm_source=Act-On+Software&utm_content=email&utm_campaign=CLNewswire_20150908&utm_term=Shaking%20up%20labour%20laws

³ The Canadian Press, “Stephen Poloz comments on unpaid work raise ire of youth groups” CBC, (5 November 2014) online: < <http://www.cbc.ca/news/business/stephen-poloz-comments-on-unpaid-work-raise-ire-of-youth-groups-1.2824388>>.