



**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 students executing 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 providing a voice for a traditionally politically disengaged group.

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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 as well as 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 *Employment Standards Act, (ESA)* should develop definitions for the various types of paid and unpaid workers: independent contractors, interns versus volunteers, etc... Moreover, organizations should be required to create a Memorandum of Understanding (MoU) when commencing any type of working arrangement with an unpaid worker. Both of these initiatives would be easy to implement, inexpensive, and achieve greater clarity for organizations and individuals entering into working arrangements in Ontario.

Recommendation 1

Create a definition of the various types of paid and unpaid workers: independent contractors, interns versus volunteers, etc...

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 a “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. Greater clarity of the relationship between employers and those who’s labour they employ would be achieved if the *ESA* created definitions of what an independent contractor is, as well as an intern versus a volunteer.

¹ Ontario Ministry of Labour, *Frequently Asked Questions* (Ottawa: Ontario Ministry of Labour, 2014) online: <<http://www.labour.gov.on.ca/english/about/faqs/>>.

Recommendation 2

Require organizations to create a Memorandum of Understanding (MoU) for unpaid workers when commencing any such working arrangement.

The proposed reform would foster a better understanding of the working arrangement for both organizations and unpaid workers. Highlighting the severity of the vulnerability of youth is the fact that “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”.² Impetus for protecting youth, and all volunteers generally, under the *ESA* is also found when considering comments from Stephen Poloz, Governor of the Bank of Canada, who advised youth to volunteer in 2014.³ Explicitly, he counsels youth to “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”.⁴ This is not necessarily bad advice, however the fact that a leading representative of the Canadian government is advocating volunteerism should be an incident that is expressly recognized when considering if new ‘volunteer protection’ laws are needed.

A Memorandum of Understanding would outline the following essential elements:

- If a prospect of a job opportunity after completion the internship exists.
- Amount of hours the organization requests from the volunteer on weekly basis as well as the duration of the unpaid work arrangement before the MoU is renewed.
- The criteria an unpaid worker must meet in order for a reference to be provided.

² Statistics Canada, Analytical Studies Branch, *Unemployment Dynamics Among Canada’s Youth*, (2013) at 1 (Author: Andre Bernard) online: <<http://www.statcan.gc.ca/pub/11-626-x/11-626-x2013024-eng.pdf>>.

³ N.a, “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>>.

⁴ *Ibid.*

- Any benefits that will be provided to the unpaid worker (i.e., new skills, hands-on experience in particular areas, any transit or lunch expenses, etc...).
- Any additional case-specific clauses that would clarify the working relationship.

Conclusion

At its essence, the policy reform advocated herein requires organizations to create a memorandum of understanding when entering into any type of unpaid working arrangement. Additionally, the *ESA* should strive towards greater clarity insofar as further developing definitions for the various types of employment relationships (i.e. independent contractor; intern; volunteer; etc...). A memorandum would add legal protection to all parties to the agreement by providing an objective reference to the expectations in the working arrangement while also ensuring *consensus ad idem*. Specifically, a memorandum would do well to outline all the benefits afforded to an unpaid worker as well as their obligations. Thereafter, if an investigation is conducted and the courts are required to determine whether or not an organization has exploited its unpaid workers, although not legally binding, a signed memorandum would serve as supporting evidence in the investigation. The MoU would allow the courts to more fairly determine if all parties understood and adhered to the agreement *bona fide*. Conclusively, the increased clarity in working arrangements provided by the recommendations advocated herein would, if adopted, strongly deter the exploitative practices witnessed by the Ontario Ministry of Labour in recent years.

SOURCES CONSIDERED BEFORE CREATING THIS POLICY RESOLUTION

Ontario Ministry of Labour, *Frequently Asked Questions* (Ottawa: Ontario Ministry of Labour, 2014) online: <<http://www.labour.gov.on.ca/english/about/faqs/>>.

Statistics Canada, Analytical Studies Branch, *Unemployment Dynamics Among Canada's Youth*, (2013) (Author: Andre Bernard) online: <<http://www.statcan.gc.ca/pub/11-626-x/11-626-x2013024-eng.pdf>>.

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>>.

FURTHER CONSIDERATIONS

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