



Labour Program Stakeholder Consultation

August 1

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Labour Standards for Interns in
Federally Regulated Workplaces under
Part III of the *Canada Labour Code*



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1. Executive Summary

In December 2017, the Government of Canada enacted legislation to extend labour standards protections to interns in federally regulated workplaces. The new provisions define **interns as individuals who are not employees and who perform activities for an employer to acquire knowledge or experience**. When they come into force, new provisions will limit unpaid internships in federally regulated workplace *to only those that are part of an educational program*. Some regulations are needed to establish when an internship can be unpaid and to specify what labour standards protections will be offered to **student interns**. The purpose of this paper is to obtain stakeholder feedback on the proposed regulations and the implementation of the new provisions.

Proposed regulations: The paper outlines proposed regulations on the process for determining that an internship can be unpaid (section 4). Then, the following proposed labour standards protections are proposed to apply to student interns (section 5):

- Limit of 40 hours/week and eight hours/day, with at least one day of rest per week;
- Right to a modified work schedule;
- Nine general holidays within a calendar year;
- Maternity-related reassignment and leave;
- Short-term leaves (for bereavement, victims of family violence, family responsibilities, and traditional Aboriginal practices);
- Protections against genetic discrimination and prohibited reprisals; and
- Protections against harassment and violence.

A few additional possible labour standards protections for student interns are also considered.

Implementation: It is proposed that employer compliance with respect to *all* interns would be addressed in the same manner as for employees, through education, counseling, investigation of complaints and inspections of workplaces.

Stakeholder feedback: Stakeholders should feel free to provide comments on some or all of the questions included in the paper, or on any other related issues that they consider relevant. Written responses should be sent no later than **September 28, 2018**, to the Labour Program's delivery mailbox: NA-LABOUR-STANDARDS-NORMES-DU-TRAVAIL-CONSULTATIONS-INTERNS-GD@labour-travail.gc.ca. Consultation sessions will also be held in September to receive stakeholder feedback.

For more information on changes to federal labour standards, follow us on Twitter.

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2. Overview of Internships in Federally Regulated Workplaces

Internships are workplace placements that offer opportunities to gain hands-on work experience. Such placements may be referred to as co-op, practicums or work-integrated learning, among others. They differ from standard employment in that they are temporary in nature and include a learning component, ranging from observation to more formal learning-by-doing work.

Concerns have been raised in recent years over the growing prevalence of *unpaid* internships in Canada. Some have argued that unpaid internships can be exploitative of inexperienced individuals and that some employers misuse them as a way of cutting down costs of labour by replacing entry-level positions.

The 2017 Federal Budget announced the federal government's commitment to limit unpaid internships in federally regulated sectors. The Budget stated that only internships that are part of an educational program may be unpaid and that these student interns would receive certain labour standards (see Box).

Work conditions are regulated by the federal government through the *Canada Labour Code* (the Code).¹ Part III of the Code establishes employment conditions such as hours of work, payment of wages, overtime pay, general holidays, protected leaves and rights on termination of employment for employees under federal jurisdiction.²

Part III applies to the federally regulated businesses and industries, including:

- Interprovincial and international transportation;
- Banks;
- Telecommunications and broadcasting;

Excerpt from 2017 Federal Budget

Limit unpaid internships in federally regulated sectors. While internships can give young Canadians the hands-on work experience they need to make a successful transition into the workforce, some internships—in particular those that are unpaid—can be unfair and exploitative. Budget 2017 proposes to eliminate unpaid internships in federally regulated sectors where the internships are not part of a formal educational program. These changes will also ensure that unpaid interns who are part of an educational program are entitled to labour standard protections, such as maximum hours of work, weekly days of rest and general holidays.

¹ The Code is an Act of Parliament that regulates a variety of employment issues regarding industrial relations (Part I), occupational health and safety (Part II) and labour standards (Part III). Enacted in 1965, Part III of the Code seeks to support fair and equitable workplaces. The Labour Program is responsible for administering the Code and, through its inspectorate, ensuring compliance and enforcement of Part II and III.

² For more information on federal labour standards, visit canada.ca/federal-labour-standards or [contact the Labour Program](#).

- Grain handling;
- Uranium mining and processing, and atomic energy;
- First Nations Band Councils; and
- Federal Crown Corporations.

The Budget 2017 announcement is aligned with recommendations from the [2017 Report of the Expert Panel on Youth Employment](#), which examined barriers faced by youth in finding and keeping jobs. This Report recommended that internships should be paid and that all interns should receive labour standards protections.

Original initiatives aimed at protecting interns in federally regulated workplaces were contained in the *Economic Action Plan 2015, No. 1*, which enacted amendments to extend occupational health and safety protections and labour standards to interns. While only amendments related to occupational health and safety were brought into force (Part II), amendments concerning labour standards (Part III) for interns would have permitted unpaid internships *in certain circumstances outside educational programs*. Prior to the development of regulations and the coming into force, further legislative changes were introduced to Part III (see section 3).

Finally, according to the Federal Jurisdiction Workplace Survey (FJWS), in 2015 there were 13,195 interns in federally regulated workplaces. Of these, 10,849 (82%) were paid while 2,346 (18%) were not paid. The majority of unpaid internships were in the telecommunications and road transportation industries. The FJWS did not specify whether or not these internships were associated to educational programs. Furthermore, about 30% of companies with unpaid interns reported offering some type of compensation, such as reimbursement of expenses, stipends or a combination thereof.

3. New Provisions Concerning Labour Standards for Interns (not yet in force)

Following the Budget 2017 announcement, *Budget Implementation Act 2017, No. 2*, introduced amendments to Part III of the Code.³ These were passed in December 2017.

Whereas Part III currently applies only to employees, when the amendments come into force, **interns** will also be covered (see box). This will ensure that all individuals in the workplace receive labour standards protections. Interns outside educational programs (for example, recent graduates, individuals engaged in learning activities due to a career change, or students who are *not* fulfilling the requirements of an educational program) will be *treated as employees* and will therefore be extended the same labour standards protections.

Student interns, i.e. those who fulfil the requirements of an educational program, may be unpaid and will be entitled to certain labour standards protections, such as maximum hours of work, general holiday and weekly day of rest. Secondary, post-secondary and vocational education, or equivalent educational institutions outside Canada will be covered (see box).

New provisions concerning labour standards protections for interns will come into force by Order in Council, once supporting regulations have been adopted. Such regulations are needed to determine when an internship may be unpaid and to specify what labour standards will apply, together with record-keeping requirements.

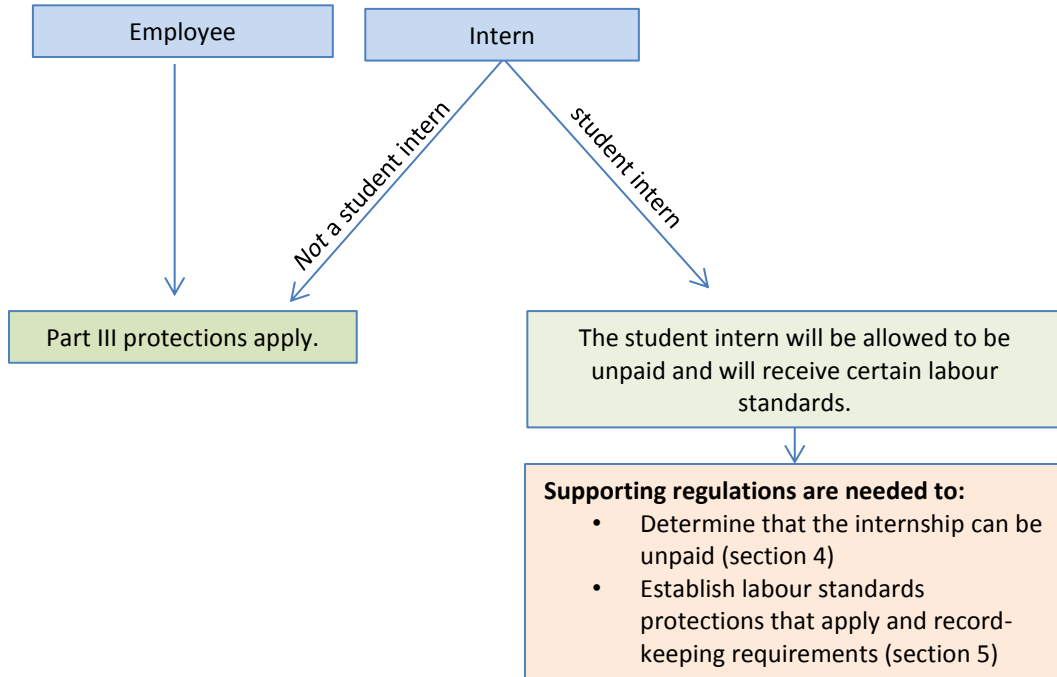
Application of the Part III to Interns (not yet in force)

Subsection 167 (1.1) provides that Part III "**applies to any person who is not an employee but who performs for an employer [...] activities whose primary purpose is to enable the person to acquire knowledge or experience**".

Subsection 167 (1.2) provides that Part III "does not apply to a person referred to in subsection 167 (1.1.) [...] if the person **performs the activities to fulfil the requirements of a program that is offered by a secondary or post-secondary educational institution, vocational school, or equivalent educational institution outside Canada**, specified or described in the regulations." *New provisions provide regulatory-making power to specify which labour standards protections will apply to these persons.*

³ To be specific, *Budget Implementation Act 2017, No. 2* amended legislation passed by the [Economic Action Plan 2015, No.1](#).

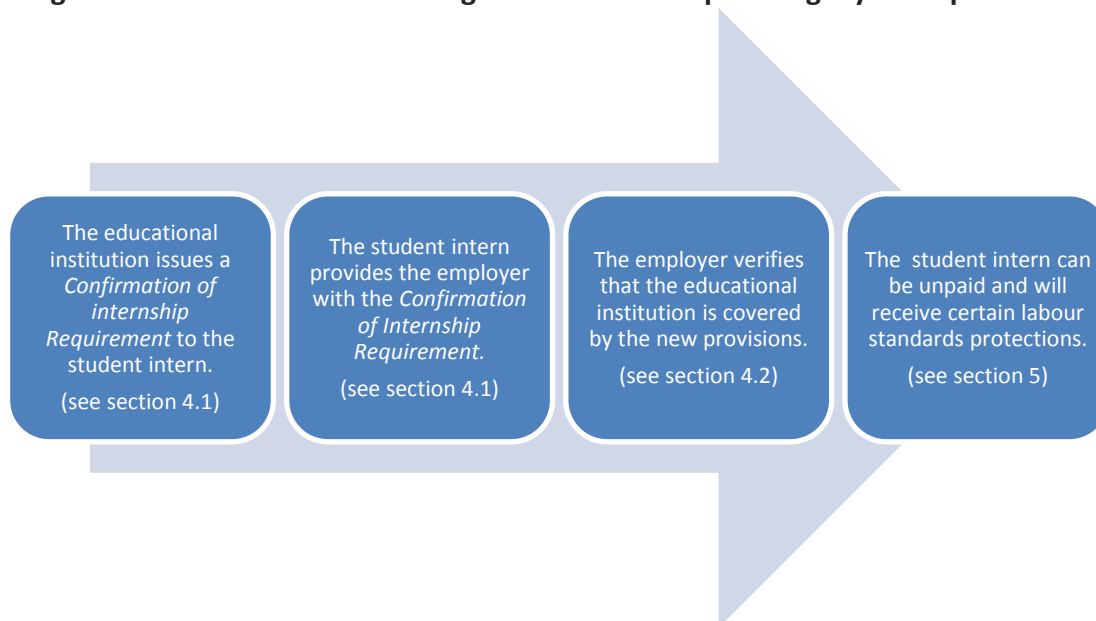
Diagram 1: Application of the Code when the new provisions concerning labour standards protections for interns come into force



4. Proposed Regulations: Process for Determining that an Internship can be Unpaid

Once new provisions concerning labour standards for interns come into force, unpaid internships will be allowed if it can be demonstrated that they are part of an educational program. This section discusses the process to determine that an internship can be unpaid. Proposed regulations introduce a new record-keeping requirement that will serve to establish that the internship is required as part of an educational program. Then, regulations are proposed to verify that an educational institution is covered by the new provisions. Diagram 1 below summarizes the proposed process.

Diagram 2: Process for determining that an internship can legally be unpaid



4.1 Confirmation of Internship Requirement

In order to allow an unpaid internship, it is proposed that the student intern provides the employer with a document confirming enrolment in a program requiring an internship, before the internship begins. This document, defined as a *Confirmation of Internship Requirement*, would be obtained by the student intern, who would be responsible for providing it to the employer. This would serve as documentation that an unpaid internship is allowed.

The *Confirmation of internship requirement* would outline the following:

- Name of the educational institution;
- Confirmation of enrolment in a program requiring an internship; and
- Details of the required internship such as duration (or number of hours) and tasks to complete. ;

Furthermore, the student intern would be responsible for informing the employer of any changes affecting eligibility for an unpaid internship. For instance, should the intern no longer be enrolled as a student, the unpaid internship would need to be terminated. In the case where the student intern performs work for the employer beyond the internship period, the status would immediately change to *employee* and the employer would be required to provide full labour standards protections.

4.2 Verification that the Educational Institution is covered by the New Provisions

Upon receipt of the *Confirmation of internship requirement*, it is proposed that the employer verify that the educational institution is a recognized secondary, post-secondary or vocational educational institution, or the equivalent outside Canada. Proposed regulations, listed in table 3 below, would specify that *educational institutions that are recognized by government or regulated for the delivery of training programs are covered*.⁴

Various reference resources are available to verify the status of an educational institution, such as the [Directory of Educational Institutions in Canada](#).⁵ International directories are also available, such as the [UNESCO Portal to Recognized Higher Education Institutions](#). It is proposed that such directories would be referenced in guidance and communication materials.

Table 3: Educational institutions covered by the new provisions

| Proposed description in regulations | Examples |
|---|--|
| Secondary schools that are authorized by the provincial/territory authority or a school board; | Public and private high schools |
| Educational institutions authorised to grant degrees, diplomas and other credentials by legislation or by government; | Public colleges, universities, some career colleges. |
| Educational institutions that are registered or licensed for the delivery of training programs; or | Career colleges and technical institutes |
| Schools and educational institutions outside Canada that are recognised by the authority responsible for education. | All of the above. |

⁴ Education in Canada falls under provincial and territorial jurisdiction, with the exception of a few institutions that fall under federal jurisdiction (e.g. the Royal Military College of Canada).

⁵ This on-line directory is maintained by the Canadian Information Centre for International Credentials (CICIC), in consultation with competent authorities responsible for education in the provinces and territories of Canada.

Questions for Stakeholders: Verification that the Internship is Part of an Educational Program

- Q1.** Are there any operational or logistical issues that might arise from requiring the student intern to provide the employer with a *Confirmation of Internship Requirement* issued by the educational institution?
- Q2.** Does the *Confirmation of Internship Requirement* provide sufficient information for determining that the internship can be unpaid? If not, please explain.
- Q3.** Do the proposed regulations on educational institutions allow for determining whether a given educational institution is covered by the new provisions?

5. Proposed Regulations: Labour Standards to Protect Student Interns

The regulations proposed in this section seek to extend certain labour standards to student interns, to support fair and equitable workplaces. The proposed list of labour standards builds on stakeholder feedback received in 2015 and 2016 from federal labour standards officers, federally regulated employers and employees, educational institutions, and advocates for students and interns. Stakeholder feedback has helped the Labour Program to gain a better understanding of the needs and realities of student interns as well as the constraints faced by employers. Accordingly, it is proposed that labour standards for student interns reflect the following *guiding principles*:

- **Protections in line with federal labour standards:** To the extent possible, rules applicable to employees should apply to student interns. No new protections are created and adaptations to existing labour standards are limited.
- **Exclusion of wage-related protections:** Although the student interns may receive a stipend, they are *not* employees and are thus excluded from all wage-related protections, such as the minimum wage.
- **Finite and short-term duration:** Unpaid internships are allowed as long as they are part of an educational program. If the student intern is no longer fulfilling the internship as part of an educational program requirement, then the internship ends.
- **Different purpose:** For a student intern, the primary purpose of the internship is *learning*. This fundamentally distinguishes the interests of the student intern from those of an employee, for instance in relation to the relationship with the employer.

5.1 Proposed List of Labour Standards for Student Interns

Table 1: Proposed labour standards for student interns

| Labour Standards | Description of Proposed Labour Standards | Justification |
|---|---|--|
| Hours of Work and Day of Rest | Hours of work would be limited to 40 hours per week and eight hours a day. The student intern would be entitled to at least one full day of rest in the week, on the Sunday wherever practicable. | Several stakeholders stated that there should be a firm limit to hours of work and that overtime hours should not be permitted. ⁶ |
| Hours of Work - Other | The employer would be required to give the student intern 24 hours written notice of any change to the scheduled hours. ⁷ If the student intern has unpaid internship and paid employment with the same employer, the combined hours of the internship and the work would not exceed 48 per week (i.e. the maximum weekly hours for employees). | Rules applicable to employees should apply to student interns. |
| Modified Work Schedule | A student intern would be allowed, on an individual basis, to establish a modified work schedule in agreement with the employer. The average hours of work for a period of two or more weeks would not exceed 40 hours a week and the schedule would be established in writing. | Several stakeholders indicated this right should be used as a flexibility measure, for instance to accommodate other commitments (study or paid work). |
| Student Interns Under 17 Years of Age | The student intern under the age of 17 would <i>not</i> : <ul style="list-style-type: none"> legally be in the workplace when required to be in attendance at school; be required to perform hazardous work; and be permitted to work between 11pm and 6am. | Rules applicable to employees should apply to student interns. |
| General Holidays | The student intern would be entitled to all nine General Holidays within a calendar year. If the student intern performs activities on a General Holiday, instead of being entitled to premium pay, the person would be entitled to a day off on another day, at a time convenient to both the employer and the student intern. | General Holidays are offered, without the pay. |
| Maternity-Related Reassignment and Leave | A student intern who is pregnant or nursing would be entitled to request that the employer modifies her tasks or that she be reassigned to another position if continuing to do the present tasks poses a risk to her health or the health of the fetus or child. | The right to reassignment is upheld, without pay if reassignment leave is needed. |
| Bereavement Leave | The student intern would be entitled to unpaid bereavement leave for the death of an immediate family member. ⁸ | The leave is offered, without pay. |

⁶ As a result of the 40 hours a week limit, overtime work is prohibited. This is consistent with the principle on the exclusion of wage-related protections, given that it would not have been possible to compensate the student intern with a premium overtime pay.

⁷ New labour standard (*not yet into force*) related to flexible work arrangements, enacted under [Budget Implementation Act, 2017, No. 2](#).

| Labour Standards | Description of Proposed Labour Standards | Justification |
|---|--|--|
| Protection Against Genetic Discrimination | The student intern would not be required by their employer to undergo a genetic test or disclose the results of a genetic test. Employers would also not be permitted to collect the results of a genetic test without the written consent of the student intern and third parties may not disclose to an employer information concerning a genetic test without the consent of the student intern. | Rules applicable to employees should apply to student interns. |
| Short-Term Leaves (not yet in force)⁹ | The student intern would be entitled to the following unpaid leaves, if the internship has been performed for a certain consecutive period of time: <i>No eligibility requirement</i> <ul style="list-style-type: none"> • Leave for Victims of Family Violence; up to 10 days per year <i>Three consecutive months</i> <ul style="list-style-type: none"> • Family Responsibility Leave; up to three days per year • Leave for Traditional Aboriginal Practices; up to five days per year | Rules applicable to employees should apply to student interns. |
| Protections against prohibited reprisals (not yet into force)¹⁰ | Employers would not be permitted to terminate the internship and demote or discipline a student intern because the person makes a complaint to the Labour Program, provides information to a Labour Program inspector, testifies in a proceeding or inquiry related to a labour standards issue, or exercises any other labour standards right. | Rules applicable to employees should apply to student interns. |

Protection from sexual harassment: Lastly, *provisions related to sexual harassment would also cover student interns*. Currently, employers are required to develop and post their sexual harassment policy prominently in the workplace. Provisions on sexual harassment are in the process of being consolidated with violence prevention under Part II of the Code.¹¹

⁸ Bereavement leave will be increased from three to five days, when amendments related to flexible work adjustments in [Budget Implementation Act 2017, No. 2](#) come into force.

⁹ New labour standard related to flexible work arrangements, enacted under [Budget Implementation Act, 2017, No. 2](#).

¹⁰ New labour standard related to compliance and enforcement measures, enacted under [Budget Implementation Act, 2017, No. 1](#).

¹¹ [Bill C-65 \(An Act to amend the Canada Labour Code \(harassment and violence\), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1\)](#).

Questions for stakeholders: Proposed List of Labour Standards for Student Interns

- Q4.** Do you agree with the proposed list of labour standards for student interns? Is there anything you would change in this proposal?
- Q5.** Of the labour standards that are proposed to cover student interns, are there any that would be problematic to implement?

5.2 Additional Labour Standards for Consideration

Stakeholder feedback is sought on a number of additional labour standards protections. In considering the list below, stakeholders are encouraged to keep in mind the four guiding principles discussed in the preamble of this section: protections in line with federal labour standards; exclusion of wage-related protections; finite and short-term duration of the unpaid internship; and different purpose of the student intern.

Table 2: Additional labour standards for consideration

| Labour Standards | Federal Labour Standards for consideration |
|--|--|
| Leaves | <p>The student intern would be entitled to the following unpaid leaves, if the internship has been performed for a certain consecutive period of time:</p> <p><i>No eligibility requirement</i></p> <ul style="list-style-type: none"> Compassionate Care Leave; up to 28 weeks <p><i>Three consecutive months</i></p> <ul style="list-style-type: none"> Sick Leave; up to 17 weeks Leave of Absence for Members of the Reserve Force; no time limit <p><i>Six consecutive months</i></p> <ul style="list-style-type: none"> Maternity Leave; up to 17 weeks Parental Leave; up to 63 weeks Leave Related to Critical Illness; up to 37 weeks Leave Related to Death or Disappearance of a Child; up to 104 weeks. <p>Considerations: These leaves are typically of a long duration, in many cases exceeding the duration of an internship.</p> |
| Work-Related Illness and Injury | <p>The employer would be obligated to subscribe to a plan for wage replacement, at a rate equivalent to what is provided for under applicable workers' compensation legislation in the province or territory of residence of the student intern.</p> <p>Considerations: Workers' compensation legislation in the provinces or territories do not all include provisions specifically for unpaid students.¹²</p> |

¹² Workers' compensation legislation in Québec, Newfoundland and Labrador and Nova Scotia specify wage replacement levels for unpaid students.

| Labour Standards | Federal Labour Standards for consideration |
|---|---|
| Individual Termination of Employment | <p>If the employer chooses to terminate an internship before its end date, at least two weeks' written notice to the student intern would be required.</p> <p>Considerations: Given that a student intern does not earn wages, pay in lieu of notice cannot apply.</p> |
| Hours of work - Trucking | <p>The <i>Motor Vehicle Operators Hours of Work Regulations</i> adjust the standard hours of city motor vehicle operators to 9 hours per day and 45 hours per week and highway motor vehicle operators to 60 hours per week without a daily limit under the Code (bus drivers are excluded from both of these categories).</p> <p>Considerations: The 2015 Federal Jurisdiction Workplace Survey indicates that 20% of unpaid interns work in road transportation. Road transportation is the sector with the majority of federal labour standards violations.</p> |

Labour standards not proposed - Lastly, it is important to highlight which labour standards are *not* proposed for student interns.

- Minimum wage, equal wages, paid annual vacation and severance pay.
- Flexibility measures to hours of work, including averaging of hours of work, excess hours permits, exclusions for professionals and other industry-specific hours of work regulations (like the *Railway Running-Trades Employees Hours of Work Regulations*) and the new right to request flexible work arrangements¹³.
- Protections related to group termination of employment and unjust dismissal.

Questions for stakeholders: Additional Labour Standards for Consideration

- Q6.** Should all or any of labour standards listed in table 2 be extended to student interns? If so, are any adaptations to the existing federal labour standards needed? Please explain.
- Q7.** Should student interns be entitled to any other existing labour standards? Please explain.

¹³ New labour standard (*not yet into force*) related to flexible work arrangements, enacted under [Budget Implementation Act, 2017, No. 2](#).

5.3 Record-Keeping Requirements

It is proposed that the employer keep records on student interns for a minimum of 36 months (the same as for employees). In addition to the *Confirmation of internship requirement* (see section 4.1), basic records would include: name; address; job title; and sex of the intern for identification purposes, and the age of the intern if younger than 17 years old. The start and end date of the internship would also be required with any other applicable records for student interns, for instance, the dates of any leave taken. Any of these records may be requested by a Labour Program inspector during an inspection or an investigation of a complaint.

Questions for stakeholders: Record-Keeping Requirements

- Q8.** Should employers be required to keep records on student interns in the same way as for employees? If not, please explain.

6. Implementation

New provisions concerning labour standards protections for interns limit unpaid internships in federally regulated workplaces and ensure that student interns are entitled to certain labour standards protections. Employer compliance with respect to *all* interns would be addressed in the same manner as for employees, through education, counseling, investigation of complaints and inspections of workplaces.

In terms of compliance and enforcement under Part III, powers of inspectors with respect to interns will be the same as for employees, allowing them to investigate labour standards complaints and engage in proactive inspections to verify compliance. In addition, *Budget Implementation Act, 2017, No. 1* introduced a number of new provisions in order to modernize compliance and enforcement measures under the Code¹⁴ and the Labour Program is currently working on developing supporting regulations. Once in force, all new compliance and enforcement measures under the Code would apply to the labour standards protections that interns will receive.

Lastly, new provisions concerning labour standards protections for interns will come into force by Order in Council, once supporting regulations have been adopted. Implementation of these changes will require the development of new guidance materials to inform employers and interns about their obligations and rights. Inspectors responsible for the administration of the Code will also be trained on how to apply and enforce new provisions concerning internships. It is anticipated that full implementation will be completed by the end of 2019.

¹⁴ New compliance and enforcement measures (*not yet into force*) were enacted under [Budget Implementation Act, 2017, No. 1](#).

Questions for Stakeholders: Implementation

- Q9.** What type of guidance, information materials and other tools would be most useful to ensure that employers and interns understand their obligations and rights?
- Q10.** Is there a need to develop communication materials targeted to educational institutions regarding federal labour standards for student interns? Please explain and provide suggestions for dissemination of such communication materials?
- Q11.** Could the implementation of the provisions concerning labour standards protections for interns have different impacts when taking into consideration gender, race, ethnicity, age or disability status of the student intern? Could any of these impacts be mitigated, through regulations or operational policies? If so, please explain.
- Q12.** Could the implementation of new provisions on interns have unforeseen negative impacts? Could any of these unforeseen impacts be mitigated, through regulations or operational policies? If so, please explain.
- Q13.** What elements should be considered in planning the timing of the coming into force? For instance, is lead time needed to make necessary adjustments? Is there a particular time preference in the calendar year for the coming into force? Please explain.

7. Final Remarks

The Labour Program would like to thank all stakeholders for taking the time to provide feedback on labour standards for interns in federally regulated sectors. Input received in 2015 and 2016 was extremely useful and has led to revisions to Part III of the Code amendments on internships. This input also informed the proposal in this paper.

Feedback received as part of the current consultation process will assist in identifying issues or concerns that should be taken into consideration in the development of regulations on internships.

Thank you again for your contribution.

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