



Claim Case Study: Montaque v. Handa Travel Student Trip Ltd.

This claim involves a class action lawsuit that alleges the class members were misclassified as volunteers when they should have been employees of the corporate Defendant, Handa Travel Student Trip Ltd. Accordingly, the class claims to be entitled to wages and benefits equivalent with an employee.

The class members are a group of people who work as “Trip Leaders” on guided tours for students. The corporate Defendant operates a travel company under several different brand names. They sell and deliver vacation packages to student-age travelers. Trip Leaders such as the class members are alleged to play an important role in the Defendant’s operations.

The Trip Leaders’ job duties and responsibilities include performing the type of tasks that tour chaperones, organizers and other employees would typically perform. They are required to follow detailed procedures and protocols set out in the Destination Staff Manual provided

by the Defendant. These tasks and procedures relate to pre-trip planning and procedures, travel organization, airport and flight procedures, emergency and on-site procedures, briefing sessions, hotel check-ins and check-outs, and return trip organization.¹

Under the *Employment Standards Act, 2000* (ESA), volunteers are not considered to be employees. The ESA does not defend volunteers, independent contractors, or anyone else who cannot be defined as an employee.

The Defendant classifies the Trip Leaders as volunteers. They are paid only a small honorarium, which is well under the Province of Ontario’s minimum wage. Moreover, they do not receive the range of benefits that employees are required to receive under the *Employment Standards Act, 2000*, SO 2000, c. 41. The Plaintiff claims that the Trip Leaders are in fact, employees, who are therefore underpaid and deprived of the employment benefits to which they are entitled.

¹ <https://goldblattpartners.com/wp-content/uploads/Montaque-v-Handa-settlement-approval.pdf>

There are two important characteristics that differentiate an employee and a true volunteer. First, the extent to which the person is helping the business, and second, whether the person is executing their job with the intention of earning a living. Whether compensation is provided or not, does not qualify them in or out of being a volunteer. Just because a person is paid does not mean they are an employee, and just because no payments were provided does not characterize this person as a volunteer.

The Judge in this case decided to accept a total settlement of \$450,000 to be paid to the class.²

Takeaways

In order to be sure that employees are not mis-classified as volunteers and unexpected costs are incurred, employers should ensure they have a formal agreement that states:

1. The work will be unpaid.
2. Their role is to gain learning experience.
3. Their role is different than the hired employees.
4. They are guaranteed a flexible schedule.
5. They are not promised a job once they finish volunteering.

Employers should have employment or volunteer agreements drafted by a lawyer who can confirm all required elements are included in the agreement.

² <https://www.kcyatlaw.ca/are-volunteers-protected-under-the-employment-standards-act-2000/>