

## ***Work experience, internships and trial work – Should it be paid?***

It is common for young job seekers to engage in unpaid work experience, internships, or unpaid trial work in the hope of getting a foot in the door and securing a long term job. While these arrangements can be considered as legitimate for educational purposes, employers should approach these arrangements with caution.

Following the publication of a report detailing the increasing issues associated with unpaid work, the Fair Work Ombudsman has launched a crack-down on unpaid work experience arrangements. The issue with such arrangements is that there is often a likelihood that an employment relationship may exist, which consequently entitles the worker to be paid minimum wages and other employee entitlements under the relevant laws, awards or agreement.

Unpaid work can be lawful in some situations:

### **Vocational Work**

Vocational work arrangements are often a mandatory requirement for training or education courses. If a person is deemed to be a vocational worker, the person will not be covered under the *Fair Work Act 2009*, and consequently not be required to receive payment. The Fair Work Ombudsman explains that a vocational placement is defined as one that meets all of the following requirements:

- It is undertaken as a requirement of an Australian-based education or training course
- It is authorised under a law or an administrative arrangement of the Commonwealth, state or a territory
- It is undertaken with an employer for which a person is not entitled to be paid any remuneration.

#### *Example 1:*

Thomas is in study at university completing an Architectural Science degree, in order to complete the degree, there is a requirement to undertake 4 weeks of vocational work experience with a registered Architect. The university and Architect practice have an arrangement for student placements, and Thomas understands that this work experience is part of the training requirements to complete the degree and as such will not be paid. These arrangements would meet the definition of vocational work under the *Fair Work Act 2009*, and therefore he would not be considered an employee under the *Act*.

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## Genuine unpaid work experience and internships

Unpaid work experience placements and internships that don't meet the definition of a vocational placement can be lawful in some instances.

Generally, if a worker is engaged as part of an authorised educational training course to allow a student to observe and undertake practical on the job experience, it is deemed to be a genuine unpaid educational arrangement under the *Fair Work Act 2009*.

To determine whether a person is a bona fide work experience person, Fair Work considers the following factors to be indicators:

- **Purpose of the arrangement:** was it to provide work experience to the person or was it to get the person to do work to assist with the business outputs and productivity?
- **Length of time:** generally, the longer the period of the placement, the more likely the person is really deemed to be an employee.
- **The person's obligations in the workplace:** although the person may do some productive activities during a placement, they are less likely to be considered an employee if there is no expectation or requirement of productivity in the workplace.
- **Who benefits from the arrangement?** The main benefit of a genuine work placement or internship should flow to the person doing the placement. If a business is gaining a significant benefit as a result of engaging the person, this may indicate that an employment relationship has been formed. Unpaid work experience programs are less likely to involve employment if they are primarily observational.
- **Was the placement entered into through a university or vocational training organisation?** If so, then it is unlikely that an employment relationship exists.

### Example 2:

A private architect practice was approached by Simon, a keen school student who wanted to engage in some 'work experience' because he is thinking of starting a career in architecture. The employer agreed to take on Simon as a work experience person, arranging for him to come into the practice for a few hours in the afternoon, two days a week. Simon started off observing in the practice, but has since got a good understanding of how the practice works, and has consequently been assisting in basic tasks and duties such as cleaning, tracing and answering the phone. The employer finds this very useful to have extra help available. Simon has been coming in regularly for the past few months and is becoming part of the team. The arrangement was made between Simon and the employer, not through Simon's school.

Despite the request for work experience coming from Simon and he is happy for it to be unpaid, when assessing the situation against the above indicators, it is likely that an employment relationship exists. This then indicates a need to pay minimum junior wages and entitlements to Simon.

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## Volunteer Work

Volunteer work is common in the not-for-profit sector, usually performed in charities, community service organisations, clubs, and sport and recreation groups. Genuine volunteers are not employees, and therefore do not need to be paid. However, an employer needs to assess whether an employment relationship exists between the two parties by assessing all the relevant factors that we have mentioned above.

## Trial Work

It is common for employers to request job candidates to perform trial work in the business, before offering employment to determine whether the candidate will be a good fit or not. If it is expected that the person will be performing productive activities, the person would normally be deemed to be an employee, and entitled to be paid as such during that period.

If a work experience placement or internship is used to determine a prospective employee's suitability for a job, the person would be considered an employee for the trial period and should be paid as such.

Similarly, probationary employees are entitled to any applicable employee entitlements and payment for all hours worked, like all other employees. Despite being a probationary employee, the person will still accrue and have access to entitlements such as annual leave, personal/carers leave, compassionate leave, public holidays and other applicable entitlements.

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Source: Fair Work Ombudsman "Internships, Vocational Placements & Unpaid Work fact sheet", March 2013.

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