



Internships, Vocational Placements & Unpaid Work

Employers are often approached by interested people (such as students) hoping to gain industry experience to aid them in their own career path. Sometimes unpaid work arrangements are entered into.

A common issue that can arise in these arrangements is whether or not an employment relationship has actually been created.

This fact sheet outlines some of the types of arrangements that can exist, the relationship between unpaid work and the relevant workplace laws and the problems that can sometimes occur. Each case will require a consideration of its own particular facts. Employers who fail to meet their obligations under the *Fair Work Act 2009* (FW Act) can face penalties of up to \$33,000 per breach.

Vocational placements

The FW Act recognises formal work experience arrangements that are a mandatory part of an education or training course. These arrangements are referred to as vocational placements, and are defined as being:

- Undertaken as a requirement of an Australian based educational or training course, and
- Authorised under a law or an administrative arrangement of the Commonwealth, a State or Territory, and
- Undertaken with an employer for which a person is not entitled to be paid any remuneration.

If all of these criteria are met, the person will not be covered by the FW Act and is therefore not entitled to the minimum wage and other entitlements provided in the National Employment Standards and modern awards.

Example 1

Katrina is in her third year of a nursing degree. A requirement for successful completion of her degree is to complete a minimum of 4 weeks work experience with a registered hospital in her state. Katrina approaches her local hospital as they have a pre-existing relationship with her university and have regular student placements. The arrangement is authorised under state law, and Katrina understands the placement is a learning exercise and she will not be paid. As the arrangement meets the definition of a vocational placement under the FW Act, Katrina would not be covered by the FW Act, and is therefore not entitled to receive remuneration.

It's important to note that exclusion from coverage under the FW Act does not limit any obligations that may arise under other legislation, including workers compensation laws, OH&S, discrimination and other relevant laws.

Work experience & internships

Unpaid work experience placements and internships that don't meet the definition of a vocational placement can be lawful in some instances. To be lawful, businesses need to ensure that the intern or work experience participant is not an employee.

One key issue in determining whether an employment contract has been formed is whether the parties intended to create a legally binding employment relationship.

When assessing whether the parties intended to form a legally binding employment relationship some key indicators would be:

- **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 placement, the more likely the person is 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 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 program?** If so, then it is unlikely that an employment relationship exists.

Example 2

A local council has advertised an internship program for university students interested in government processes. The internships have been advertised as voluntary and students are allowed to select the hours they spend at the council office over a 2 week period. As the council is careful to ensure that the role is mainly observational, there is no expectation that the students will perform productive work during their internship and the student is gaining the main benefit from the arrangement, it is unlikely to create an employment relationship.

Example 3

Stuart recently completed a Bachelor of Journalism and is looking for work as a journalist. Stuart responds to an advertisement to write for his local paper on a full-time basis for 3 months as an 'unpaid intern' to try and gain experience and increase his chances of employment. Since Stuart had completed his degree and the placement was not a requirement of his course, it cannot be considered a vocational placement under the FW Act. The paper advises Stuart that he will be given specific tasks and deadlines to complete that will assist in the production of the paper and that this productive activity will take up the majority of his time. This suggests Stuart may have been engaged as an employee and entitled to remuneration.

If Stuart mainly observed how the newspaper operated for a few hours a week over 2 weeks and there was no expectation of productive work for the business, it is unlikely that he would be considered an employee.

Whether or not an employment relationship exists depends on the specific circumstances and any agreement reached between those concerned. Educational institutions and businesses should seek professional advice from their solicitor, chamber of commerce or industry association before entering into any such arrangement.

Volunteering

A great deal of volunteer work is performed in the not-for-profit sector, which includes charity and community service organisations. People can offer their services voluntarily to assist in the not-for-profit organisation's goals.

However, a business and person can't simply characterise what is actually an employment relationship as volunteer work. All the relevant factors outlined above need to be considered.

Unpaid trials

Trial work involves a person performing work (or 'trailing') at a place of business. If this is at the request of the employer or it is expected that the person will be performing productive activities, the person would normally be an employee in these circumstances and entitled to be paid as such.

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 paid for all hours worked.

While this does not prevent a person taking up employment after a genuine unpaid work experience or internship, each situation should be carefully considered to determine if the facts have given rise to an employment relationship.

Further information

Vocational placements and work experience are not the same as formal placements such as apprenticeships and traineeships. For information on these types of placements, visit the [Apprenticeships and traineeships](#) section of www.fairwork.gov.au.

The Fair Work Ombudsman has published fact sheets on many elements of the *Fair Work Act 2009* and employer obligations including modern awards, general workplace protections and unlawful discrimination. To access these fact sheets, as well as additional information and resources to help you understand your rights and obligations, visit www.fairwork.gov.au or contact the Fair Work Infoline on **13 13 94**.

Find out more

About the Fair Work Ombudsman fact sheet

International students fact sheet

Minimum wages fact sheet

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Fair Work Australia website: www.fwa.gov.au

FWA Help Line: **1300 799 675**

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Call through the National Relay Service (NRS):

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