

EXPERIENCE OR EXPLOITATION?

THE ISSUES AROUND UNPAID WORK ARRANGEMENTS IN AUSTRALIA

In April 2012 the Fair Work Ombudsman (FWO) commissioned research into the nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia. The research was completed in January 2013 by Adelaide University Law School Professors, Andrew Stewart and Rosemary Owens. Findings will inform FWO education and enforcement activities in the area of unpaid work.

WHAT ARE THE ISSUES

Significant number of people, especially youth and migrants who may be unaware of their workplace rights, are being asked to undertake unpaid trials and internships

Unpaid internships are prevalent in most professional industries
Unpaid work arrangements are often considered a prelude to paid work
Belief that unpaid internships are mutually beneficial and should not be discouraged

International students and temporary visa holders are especially vulnerable to unpaid work as they seek to secure access to permanent residency
Organisations exist whose business is the promotion and facilitation of unpaid work opportunities

Genuine lack of understanding and clarity about the legality and legitimacy of unpaid work
Common misconception that work integrated learning can be unpaid
Legitimate vocational placements play an important and beneficial role in the pathway from education to work

Growing number of businesses are using unpaid work schemes as an alternative to hiring paid staff – if this trend is left unchecked it's likely to gather pace as employers try to maintain competitive advantage

Determining if a person is entitled to minimum wage and other employee entitlements requires consideration of each case's own particular facts

REPORT RECOMMENDATIONS

FAIR WORK OMBUDSMAN RESPONSES

Run free and voluntary educative program for the higher education sector

Invite employers in unpaid work prevalent industries to participate in FWO's National Employer Program

Initiate engagement with key stakeholders representing employers and employees, with an emphasis on vulnerable workers

Engage with DIAC, ACCC and APSC to alert agencies to potential illegality of unpaid work arrangements and to encourage information sharing

Improve liaison with relevant government agencies

Conduct targeted campaigns in key industries

Increase levels of compliance by enhancing deterrence effects at the industry and geographic level, focusing on sectors where unpaid work is prevalent

Investigate any arrangements on the basis of a legitimate complaint to stop exploitive practices rather than stifle opportunity

Review existing and develop further FWO education resources for particular types of work experience and industries

Expand guidance and education activities

Instigate legal action before relevant courts where appropriate

Better define unpaid work experience

Continue to devote resources to initiating proceedings where unpaid work arrangements are being used to exploit workers

Work to establish a position on what constitutes unlawful unpaid work arrangements and how FWO will seek to regulate those arrangements