

## Internships & unpaid work - update

12 August 2014

In February, 2013, the Fair Work Ombudsman released the findings of a major report into unpaid work, internships and unpaid trials.

The report provided the first significant analysis of the issue in Australia and confirmed what the Fair Work Ombudsman suspected – that growing numbers of employers are using unpaid work schemes.

Experience or Exploitation: The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia was prepared by University of Adelaide Law School professors Andrew Stewart and Rosemary Owens.

Since releasing the report, the Fair Work Ombudsman has consulted extensively with relevant key stakeholders about how it can best educate and inform the community on issues identified by the researchers.

Feedback was sought from peak bodies including the Australian Chamber of Commerce and Industry (ACCI), the Australian Industry Group (AIG), the Australian Council of Trade Unions (ACTU), the higher education sector - including the University of Melbourne, Royal Melbourne Institute of Technology (RMIT) and Deakin University, the National Association of Graduate Careers Advisory Services (NAGCAS), the Australian Collaborative Education Network (ACEN) and report co-author Professor Stewart.

### Web-based resources

The Fair Work Ombudsman has developed an expanded range of internet resources for employers, employees and higher education institutions to promote a clear understanding in the community about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act.

Materials include new Fact Sheets, covering the following topics:

Unpaid internships and work experience, which should constitute mainly observation, rather than productive work, not run for a long period of time, not be work that a normal employee would perform, not require the person to come to work or perform productive activities and mostly benefit the person, not the business/organisation.

Unpaid trials, which are only appropriate when they involve demonstrating a skill directly relevant to the job, are only as long as necessary to demonstrate the job skill - this is dependent on the type of work and could range from an hour to a shift - and there is direct supervision for the whole trial.

Vocational (student) placements, which are lawfully unpaid if there is a genuine placement, a requirement as part of an education or training course, no entitlement to pay for the student work and approval for the placement from the education provider.

Industry specific information for print and broadcast media, legal and marketing, the hair and beauty sector and cafes, restaurants and accommodation.

The new resources are available at our [Unpaid work pages \(www.fairwork.gov.au/pay/unpaid-work/default\)](http://www.fairwork.gov.au/pay/unpaid-work/default) at [www.fairwork.gov.au/unpaidwork](http://www.fairwork.gov.au/unpaidwork)

### Education

The Fair Work Ombudsman is also delivering information about unpaid work arrangements to the tertiary sector through an Unpaid Work Higher Education Program. The program is tailored to focus on specific universities and training organisations and assist with their vocational placement programs and policies.

A range of options are available for participants, including presentations, Q&A sessions and the option to review material. General Q&As from the program will be available for all universities towards the end of the program.

The following universities have expressed an interest in participating in the program: University of Melbourne, Royal Melbourne Institute of Technology, University of Sydney, Queensland University of Technology, Monash University and Victoria University.

After learning that a major capital city festival was advertising for 'unpaid interns' to perform roles that could have been construed as employment relationships, the Fair Work Ombudsman raised concerns about potential breaches of the Fair Work Act and organisers removed the advertisements and gave an undertaking to partner with educational institutions to source future interns through lawfully-structured unpaid vocational placement arrangements.

## Website initiative

The Fair Work Ombudsman has worked with a job-finding website to address the issue of advertisements on unpaid internships placed on the website that contain strong indicators that the role is in fact a job.

The site has implemented a system that flags to its compliance team the placement of any advertisements containing the words "internship" or "unpaid". This compliance team then reviews the material and will reject advertisements if necessary.

The Fair Work Ombudsman has also provided content regarding internships for the 'tips and resources' section of the website and consultation with the site is ongoing.

## Young Workers' Team

- The Fair Work Ombudsman has established a Young Worker's Team which has been consulting with various stakeholders to address questions about unpaid work. These interactions and assistance include:
- Delivering presentations to hairdressing apprentices at TAFE colleges in Sydney to encourage the reporting of unpaid work trials.
- Liaison with the Media, Entertainment and Arts Alliance, resulting in the union publishing on its website a news article titled 'Fair and lawful internships'.
- Liaison with the Australian Hotel's Association, resulting in the publication of an article in the AHA newsletter on unpaid trials and work experience in the hotel sector.
- Facilitating workshops with Hair and Beauty Australia and the Hair and Beauty Industry Association in Melbourne, Sydney and Brisbane.
- Several pre-emptive educational activities when advertisements for unpaid arrangements have been brought to the attention of the Fair Work Ombudsman. In these cases the advertiser (employer) has been contacted and advised of the potential unlawful nature of such arrangements.

The Young Workers Team will be involved in a national pro-active compliance and education campaign in 2014-15 focussing on apprentices and trainees.

## Compliance

**Litigation (Crocmedia):** The Fair Work Ombudsman initiated legal proceedings against Melbourne media company Crocmedia Pty Ltd, alleging it underpaid two workers who produced radio programs broadcast on the SEN network, including one who was allegedly not paid at all for seven months. In a Statement of Claim lodged with the Court, the Fair Work Ombudsman alleges the two were misclassified as volunteers, or contractors, when they should have been classified as casual employees and that they were subsequently underpaid a total of more than \$22,000. CrocMedia has rectified the alleged underpayment, but the matter remains before the Court for penalty decision.

**Litigation (Devine Marine Group):** The Fair Work Ombudsman filed proceedings against Devine Marine Group & Others alleging non-payment of wages of around \$25,000 to two overseas workers from Fiji employed on sub-class 456 visas. The workers were engaged for three-month periods to work up to seven days a week restoring a barge. The employer denies any employment relationship and maintains the workers were engaged under a training arrangement to benefit them when they returned to Fiji. The workers allegedly did not receive wages for time worked and no formal training or qualifications were obtained. The matter remains before the court.

**Friend of the Court:** The Fair Work Ombudsman appeared as a "friend of the court" in the small claims list before Judge Burchardt in the Federal Circuit Court on May 5 this year in the matter of Sitong Chen v Gavin Ma & Co Pty Ltd (MLG232/2014) in which it had prior involvement. The key question in the matter was whether the Applicant was an employee or was undertaking work experience. The Applicant alleged that she performed accounting and administrative work on a full-time basis from January, 2013 until August, 2013 and was entitled to be paid approximately \$20,000 in unpaid wages, annual leave and public holiday pay. The Respondent contended that the Applicant was not an employee, was engaged to undertake work experience for her CPA, and was not in the office for full-time hours. The Respondent alleged that the Applicant worked on university assignments when she was in the office. The Fair Work Ombudsman had conducted an investigation and issued a finalisation letter concluding that the Applicant may have been an employee and performed productive work, but due to a lack of evidence, was unable to substantiate the exact dates or quantify any wages owing. The Court concluded that the Applicant must have done some work, otherwise she would not have been allowed to attend the Respondent's business for such a lengthy period. Judge Burchardt ordered the Respondent to pay an amount of \$1865, being 10 per cent of the amount claimed by the Applicant, for unpaid wages and public holidays.

## Recent case studies

**Case 1:** After receiving a referral, the Fair Work Ombudsman investigated the case of a Chinese national who worked for 12 months in Adelaide as an accountant under what was termed a work experience arrangement. The investigation disclosed the overseas worker was performing work for the business as an accountant that could be charged out to clients. The employee in question agreed to be interviewed by Fair Work inspectors, but was genuinely fearful he would not secure his Regional Sponsored Migration Scheme visa if

he co-operated with us and made it clear he would not be part of any court proceedings. Accordingly, we managed to secure a modest \$9000 back-payment for him but we could not progress the matter to litigation because of his refusal to co-operate with our investigation.

Case 2: The Fair Work Ombudsman has also investigated the matter of a Chinese national obtaining an internship through a website. The worker was provided with a business card and a workplace email and performed the duties of an accountant for 38 hours a week. Our intervention resulted in the employee receiving back-pay of \$11,900.

Case 3: The Fair Work Ombudsman received requests for assistance from four university under- graduates who enrolled in a three-month course (with a \$7999 fee) with an advertising agency that described itself as a “dynamic, all-encompassing business marketing and development company”. They worked full-time hours for between 7 and 13 weeks on real client projects including advertising, marketing, business strategies, graphic and web design. Our investigation found that the company gained a commercial benefit from the work but the employees received no actual formal training. Whilst we found the four employees had been underpaid more than \$30,000, the company was subsequently placed into voluntary administration, preventing the Fair Work Ombudsman from commencing legal proceedings. However, our concerns about the potential contraventions of the Australian Consumer Law (ACL) have been referred to the Australian Competition & Consumer Commission (ACCC).

Case 4: A graphic designer in NSW has highlighted a potentially unlawful internship arrangement that she participated in, working for just over four months without remuneration. According to her contract, she was to receive \$1000 upon successful completion of the internship. The matter has been referred to our Young Workers’ Team.

Case 5: An overseas worker employed by a television station in NSW contacted the Fair Work Ombudsman alleging that payment of only \$70 a day had been received for 155 days work over nine months. This matter has been referred to our Overseas Workers’ Team.

2013-14 financial year

The Fair Work Ombudsman received:

- 981 inquiries related to internships and unpaid work on its Fair Work Infoline, up 47 per cent on the 520 received in 2012-13. There were 425 calls in 2011-12.
- 126 requests for assistance relating to internships and unpaid work, compared to 127 in 2012-13 and 53 in 2011-12.

An “unpaid work” fact sheet was viewed 25,297 times.

Our position

The Fair Work Ombudsman agrees that there are many legitimate work-based learning programs and vocational placements which genuinely enhance the learning of participants.

Indeed, genuine vocational placements are lawful under the Fair Work Act and young workers can potentially gain many benefits from opportunities for work-based learning in their chosen field.

While the Fair Work Ombudsman does not want to stifle genuine learning and development opportunities, we are mindful that the initial research report found that a growing number of Australian businesses are using unpaid work schemes as an alternative to hiring paid staff. In many of these situations, workers should actually be classified as employees – and should be getting paid for their work.

The research report found that young people and migrant workers are particularly vulnerable to being taken advantage of through these schemes, and our Young Workers’ and Overseas Workers’ teams respectively are alert to this fact.

The Fair Work Ombudsman believes there is a difference between a genuine opportunity to learn and develop skills and being taken advantage of.

Our view is that workers themselves can help to determine which it is, by asking themselves questions such as who is getting more benefit out of the relationship, me or the company?

For example, an unpaid internship for a marketing assistant required to do filing, mail-outs, attend trade events on behalf of the company and answer the phones for seven to eight hours a day, five days a week, is probably a job you should be getting paid for.

Any person who believes they are being exploited as an intern or in an unpaid work trial, or knows of somebody who is, should contact the Fair Work Ombudsman.

We will take a particular interest in any matters where there is evidence that an employer is systematically or strategically exploiting unpaid work experience as a form of free labour.

The Fair Work Ombudsman encourages employers and their advisers to think carefully about how they engage unpaid labour. We are approachable and we are happy to discuss proposed arrangements.

Employers and employees looking for information and advice about unpaid work and internships should visit the website or call the Fair

Work Infoline on 13 13 94. A free interpreter service is also available on 13 14 50.

Download:

- [The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia Experience or Exploitation? \(PDF 4.5MB\) \(www.fairwork.gov.au/ArticleDocuments/763/UW-complete-report.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/763/UW-complete-report.pdf.aspx)

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.