

Unpaid work - hospitality industry

Unpaid work can take on different forms. In the hospitality industry, these arrangements can involve unpaid trials that are entered into to test a person's job skills.

These arrangements can be initiated by employers or the person wanting the work or experience.

Is unpaid work lawful?

Some unpaid work arrangements are lawful and others are not. Depending on the nature of the arrangement, the person doing the work may be an employee and be entitled to be paid the legal minimum rate of pay for the type of work they're doing, along with other minimum employment entitlements.

Unpaid trials (skills demonstration)

Sometimes a person is asked or required to perform work or undertake a trial to be evaluated for a vacant position. This skill demonstration is used for the purposes of determining a prospective employee's suitability for a job. It is often referred to as a work trial.

A brief work trial can be legally unpaid if it is necessary to evaluate someone's suitability for the job, and:

- it involves no more than a demonstration of the person's skills, where they are relevant to a vacant position
- it is only for as long as needed to demonstrate the skills required for the job. This will be dependent on the nature and complexity of the work, but could range from an hour to one shift
- the person is under direct supervision of the potential employer (or other appropriate individual) for the entire trial.

Any period beyond what is reasonably required to demonstrate the skills required for the job must be paid at the appropriate minimum rate of pay. If an employer wants to further assess a candidate's suitability, they could employ the person as a casual employee and/or for a probationary period and pay them accordingly for all hours worked.

For more information about unpaid trials please see our [Unpaid Work Fact Sheet](#).

Example 1

A café advertises for an experienced barista. After an interview, the owner asks the applicant to stay back for about an hour so they can test their coffee making skills. The owner wants to make sure the applicant knows the difference between a cappuccino and a soy latte!

The unpaid trial is no more than necessary to test the quality of the applicant's skills, and legitimately forms part of the recruitment process in this case.

Example 2

Jane saw an advertisement in the newspaper from a local restaurant seeking a full-time kitchen hand. When she applied for the job, Jane was informed that she needed to work a two week unpaid trial, after which the employer would make a decision about whether she was suitable for the role. Keen for the job, Jane agreed.

After the trial, the employer told Jane that she was not suitable for the role and she was not paid for any of the hours she worked.

Jane should have been paid for all hours worked because she was performing productive work for the entire 'trial'.

Example 3

John, a restaurant owner, was told by his friend that he could improve the profitability of his business by supplementing his regular staff on the busy weekend shifts with unpaid workers 'being trialled'. John's friend promoted this scheme as a 'fountain of free labour' because there would never be a genuine intention to offer ongoing work to the people being 'triated'.

Acting on the advice of his friend, John instructed the manager of his restaurant to start 'churning and burning' through resumes left with the business by job seekers - offering them unpaid weekend trial shifts. John also instructed the manager to not offer the job seekers more than one unpaid trial shift so as to make sure it looked like the 'trials' were genuine.

Schemes designed to disguise employment relationships are illegal. In this example, John and his business could face significant penalties for breaching workplace laws, in addition to having to back-pay the workers for the time they worked.

Example 4

Kate responded to an advertisement from a motel seeking an apprentice cook. When she applied for the job, Kate was told that she needed to do an unpaid trial period of one or two days, during which the employer would assess her suitability for the role. Kate accepted the offer as she was keen to secure the apprenticeship.

Kate's duties included assisting cooks and chefs prepare and store food, washing dishes and cleaning work areas. At the end of each shift, she was told by the restaurant manager that she needed to come back the next day because the boss wasn't available to make a decision. Soon Kate had worked more than a week without being paid.

The unpaid trial was unlawful, regardless of whether she secured the apprenticeship. She was undertaking the work of paid employees and the business received a significant benefit from her labour. Kate should have been paid for the duration of her trial.

Further information

For information and resources to help you understand your rights and obligations on the topic of unpaid work, visit <http://www.fairwork.gov.au/unpaidwork> or contact the Fair Work Infoline on 13 13 94.

Contact us

Fair Work Online: 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**