

Unpaid Work and Volunteers

Work arrangements that fall within the scope of the *Fair Work Act 2009* (the Act) create an employment relationship and require that the Australian minimum wages and conditions of employment are met.

If the arrangement creates an employment relationship under the Act and the employer fails to meet their obligations under the Act, they can face penalties of up to \$33,000 per breach. The [Fair Work Ombudsman](#) has a [Fact Sheet](#) that may assist Members.

An Employer may be approached by interested persons to enter into unpaid working arrangements – the most common are:

- Unpaid Trials;
- Vocational Placements;
- Volunteering; and
- Work Experience & Internships

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.

Vocational Placements

A vocational placement is formal work experience that is a mandatory part of an education or training course. These are defined as being:

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

If the above criteria are met, the person will not be covered by the Act and is therefore not entitled to the minimum wage and other entitlements provided by the National Employment Standards (NES) and Modern Awards. However, it should be noted that the exclusion from coverage under the Act does not limit any obligation that may arise under other legislation, including workers’ compensation laws, occupational health and safety, discrimination and other relevant laws.

Volunteering

Volunteer work is generally only performed in the not-for-profit sector, including charities and community service organisations, where people offer their services to assist in the 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 in Unpaid Trials, Vocational Placements and Work Experience & Internships need to be considered.

Work Experience & Internships

Unpaid work experience placements and internships are only lawful if the intern or work experience participant is not an employee.

A range of factors are relevant when determining whether the parties intended to create a legally binding employment relationship, including:

- **The 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.

Whether or not an employment relationship exists depends on the specific circumstances and any agreement reached between the parties.