Unpaid work arrangements are entered into for a number of reasons. These include:

- giving people experience in a job or industry
- testing a person’s job skills
- volunteering time and effort to a not-for-profit organisation.

These arrangements can be initiated by employers, the person wanting work or experience, or third party organisations such as schools and universities. Under some of these arrangements it is lawful not to pay the person doing the work, but under other arrangements the person is actually an employee and is entitled to be paid.

Generally, whether an unpaid arrangement is lawful under the *Fair Work Act 2009* (FW Act) depends on whether an employment relationship exists, or whether the arrangement involves a ‘vocational placement’.

**Vocational placements**

A ‘vocational placement’ is a formal work experience or internship arrangement that is part of a government-approved education or training course. These placements are allowed to be unpaid.

For more information, including the criteria that an arrangement must meet to be a vocational placement under the FW Act, see our Vocational Placements Fact Sheet.

**Work experience & internships**

Work experience and internships can help people:

- seeking experience in an occupation or industry
- making the transition from study to work
- exploring a new career path.

These arrangements may be paid or unpaid, depending on the circumstances. The term ‘internship’ is a broad one that can cover many different types of arrangements, including placements that may or may not be associated with an education or training course.

For an unpaid work experience arrangement or internship to be lawful, the business or organisation needs to ensure that the intern or work experience participant is not actually an employee. If they are an employee, they are covered by the FW Act and entitled to:

- a minimum wage
- the National Employment Standards
- the terms of any applicable award or enterprise agreement.

**Identifying an employment relationship**

To determine whether a person is an employee, and entitled to payment, each case must be considered on its own particular facts. There is no definition of employment under the FW Act.
Instead, it is a matter of identifying whether the arrangement to work involves an employment contract. That contract need not be in writing: it can be a purely verbal arrangement. But in each case, it must be clear that:

- the parties intend to create a legally binding arrangement
- the person performing the work is to get something in return (which might be just experience or training)
- there is a commitment to perform the work
- the person must not be performing the work as part of a business of their own.

When looking at whether an employment relationship exists the substance or reality of an arrangement should be considered, not how the parties have chosen to describe it.

When looking at whether an employment relationship exists, the following questions are relevant:

**What is the nature and 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 ordinary operation of the business or organisation? The more that productive work is involved, rather than just observation, the more likely it is that an employment relationship will be found.

**How long is the arrangement for?** Generally, the longer the period of the arrangement, the more likely the person is an employee – though even short engagements can still be found to involve employment.

**How significant is the arrangement to the business?** Is the work normally performed by paid employees? Does the business or organisation need this work to be done?

**What are the person’s obligations?** Although the person may do some productive activities during work experience or an internship, they are less likely to be considered an employee if there is no expectation or requirement that they attend for work or perform such activities.

**Who benefits from the arrangement?** The main benefit of genuine work experience should flow to the person gaining the experience. If a business or organisation is gaining a benefit as a result of engaging the person, this may indicate an employment relationship has been created.

While a person is not prevented from taking up employment after a genuine unpaid work experience arrangement or internship, each situation should be carefully considered to determine if an employment relationship has been formed at an earlier point.

**Example 1**

A local council has advertised an internship program for high school or university students interested in government processes. The internships have been advertised as unpaid positions and students are allowed to select the hours they spend at the council office over a 2 week period. The council is careful to ensure that the role is mainly observational and there is no expectation that the students will perform productive work during their internship. The student is gaining the main benefit from the arrangement. It is unlikely that an employment relationship has been created in this case and the internships are lawfully unpaid.
**Example 2**

A publishing company has advertised an internship program for recent graduates of copywriting and journalism university courses. The advertisement calls for applicants who are passionate about their career and who are looking for experience as a gateway to future employment opportunities. The company advises that it will recruit for the positions based on academic transcripts, work experience and references.

The positions are unpaid, but the advertisement notes that the successful candidates will receive perks and networking opportunities throughout their internship. The positions are advertised as for three months full-time, with an option of an offer of employment based on the candidate’s performance during the internship. The duties listed include general administration, event planning, and proof reading, with some opportunities for writing depending on performance.

Despite the offer of perks, work experience and networking opportunities, the company will receive the main benefit out of this relationship. It is likely that an employment relationship would be formed in this case and that the working arrangement is unlawful.

**Volunteering**

A volunteer is someone who does work for the main purpose of benefitting someone else, such as a church, sporting club, government school, charity or community organisation. Volunteers are not employees and don't have to be paid.

As with work experience arrangements, all relevant factors must be considered to determine whether a person is a genuine volunteer or whether, in fact, an employment relationship exists even though the worker is called a ‘volunteer’.

Key characteristics of a genuine volunteering arrangement include:

- the parties did not intend to create a legally binding employment relationship
- the volunteer is under no obligation to perform work or attend the workplace
- the volunteer doesn’t expect to be paid for their work.

The more formalised that volunteer work arrangements become, for instance if the volunteer is expected to work according to a regular roster, the greater the possibility that an employment relationship will be found.

It is less likely that an employment relationship will be found to exist where the volunteer work is undertaken for selfless purposes or for furthering a particular belief in the not-for-profit sector.

**Example 3**

Franko approaches a soup kitchen run by his local charity to ask about volunteering. He fills in an application form and meets with the volunteer coordinator who explains the roles and responsibilities of volunteers. Franko will be helping in the kitchen, serving and cleaning. The coordinator confirms that he will not be paid.
Franko agrees to volunteer once a week when he can and understands he will not receive payment. Franko is not an employee and the charity does not have to pay him for his time.

Example 4
Jessica sees an advertisement on her university notice board for a job as a barista at a campus café. The café is run as a not-for-profit company, with all of the profits it receives donated to local and international charities.

The position was advertised for Monday, Tuesday and Thursday mornings from 7 am to 12 pm. The successful candidate needs to have experience and be able to demonstrate their skills making a range of different types of coffee. At her interview, Jessica is advised that she will not be paid for her time. If she isn’t able to work, she needs to advise her manager the night before, and arrange someone to cover her shift.

It is likely that this type of arrangement constitutes an employment relationship, and should be paid.

Unpaid trials
In some instances, a person is asked or required to perform work or undertake a trial at a place of business in order 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 work trial can legally be unpaid if:

- it involves no more than a demonstration of the applicant’s skills, where they are directly relevant to a vacant position
- it is only for as long as needed to demonstrate the skills required
- the applicant is under direct supervision of the potential employer (or other appropriate individual) for the entire trial.

Generally, an unpaid work trial should be no longer than one shift or, for some jobs, one day, depending on the nature of the work and the skills being demonstrated. Any period beyond what is reasonably required to demonstrate the skills required for the job must be paid.

An unpaid work experience arrangement or internship in which the person performs productive work, even if under supervision, is not a legitimate way to determine a prospective employee’s suitability for a job. If an employer wants to assess more than simply whether an applicant has the required skills, and therefore requires more than a work trial, they could employ the person as a casual or probationary employee and pay them accordingly for all hours worked.
Example 5

Jack applies for a job as a trades assistant at a local panel beaters. After his interview, the owner asks him to work a few hours, unpaid, so he can see if Jack knows his way around a car and workshop. Jack agrees.

Jack spends the afternoon helping one of the tradesmen with body repairs. The tradesman watches how well Jack knows how to work safely and use the right tools. At the end of the shift the owner offers Jack a job.

Jack’s trial was reasonable to demonstrate his skills and he does not need to be paid for those hours.

Example 6

Mina applies for a job as a receptionist at a medical centre. After the interview, the manager calls Mina to ask her to do a trial on the weekend so they can make sure that she can handle working over a busy period. Mina agrees, and performs a shift on a Saturday morning. On the day, the manager shows Mina how to answer the phone, transfer calls, book and cancel appointments, and take payments at the end of a consultation.

Mina spends the morning performing these duties. At the end of her shift, the manager advises that she has done a good job, but she is not able to offer her the position until she gets it approved at a meeting on Wednesday. The manager advises Mina that if she could cover the shifts on Monday and Tuesday, she would demonstrate her commitment to the position, which would help her secure the position. The manager advises that would not be paid for these shifts.

These additional shifts are likely to represent an unreasonable amount of time for a demonstration of skills and abilities. Mina should be paid for the hours that she works on Monday and Tuesday.

Other laws

Even if an unpaid work trial, internship or other work experience arrangement is lawful under the FW Act, other laws may still apply in relation to matters such as work health and safety or discrimination.

Further information

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