Unpaid work in the hospitality industry

Unpaid work arrangements are entered into for a variety of reasons. These include giving people experience in a job or industry or testing a person’s job skills. These arrangements can be initiated by the business, the person wanting the work or experience, or third party organisations such as schools and training institutions.

In the hospitality industry, these arrangements typically involve unpaid work trials.

Unpaid work trials can be legal where an employment relationship has not been formed. However, when employment is disguised as an unpaid work trial, the person is entitled to be paid.

Unpaid Trials

In the hospitality industry, it’s relatively common for an employer to ask a candidate to do a trial for a role before offering them a job. If the trial strictly a demonstration of the required skills and is for a short period of time, it can be lawfully unpaid.

There can come a point, however, when an employment relationship is created. If this occurs, the person needs to be paid. Indicators that an employment relationship has formed include when:

- the person has moved beyond demonstrating skills to completing productive work
- the person is doing tasks not related to evaluating their skills
- the person is doing work in the place of an employee
- the business places expectations and continuing obligations on the person
- Note: people engaged to demonstrate their ability to perform work that doesn’t require demonstration of particular skills (such as cleaning duties in a kitchen) should be paid for all the hours they work. If an employer wants to trial a person for such a role, they should consider engaging them as a casual employee or for a probationary period, remembering that employees on probation are entitled to the same pay and conditions as other employees.

Example 1

Jin approached a local café for a job as a barista after seeing a notice in the café window. Paul, the business owner, suggested that Jin undertake a short unpaid trial as a way of verifying that she had the required coffee making and customer service skills to perform the role.

Jin worked a 1 hour unpaid trial under Paul’s supervision. Impressed by her performance, Paul offered Jin the job at the end of the trial and started paying her for shifts thereafter.

Jin’s unpaid trial was reasonable because it was a skill demonstration to ensure she could to the work required.
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 would need 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 to the unpaid trial.

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

Jane should have been paid for the trial because she was doing work that the business could not reasonably require her to demonstrate skills for.

Example 3

John, a restaurant owner, was told by his friend that he could improve the profitability of his business by supplementing his staff on busy weekend shifts with unpaid trial workers. John’s friend promoted this scheme as a ‘fountain of free labour’ because there would never be genuine intention to employ anyone who John trialled.

Acting on the advice of his friend, John instructed the manager of his restaurant to start offering job seekers unpaid weekend trial shifts. John also instructed the manager to use many unpaid trial workers, while keeping each trial shift short to make it look like a legitimate arrangement.

Schemes designed to conceal employment relationships to avoid paying employees 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.

For more information about unpaid trials please see our Unpaid Work Fact Sheet.
**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](http://www.fairwork.gov.au/unpaidwork) or contact the Fair Work Infoline on 13 13 94.