

# Employer Update

## Unpaid trials, work experience and internships - what's the difference?

Businesses should be careful that they are not in breach of employment laws when inviting a candidate in for an unpaid trial shift. Some unpaid trial shifts are lawful, and others are not.

A recent study commissioned by the Federal Department of Employment, found 58 per cent of people aged 18 to 29 had done unpaid work experience in the past five years. It also estimated a third of Australians aged 18-64 had done some unpaid work as part of an internship or a job trial.



### Unpaid Trials, Work Experience and Internships?



#### Work experience:

The term 'work experience' is an often used term however its use can lead to problems for employers. Generally, there is no such thing as an unpaid trial where an employer requires a person to work in a job for a trial period. Employers should be aware that young persons, even below the age of 15 years, are entitled to the same award benefits as older workers.

Employers often place a young person on an unpaid trial period to determine their ability to handle the work. This is a dangerous practice as once productive work takes place the person is employed and therefore, subject to the minimum conditions provided by the relevant award, if applicable.

#### Internships:

There are circumstances in which an unpaid (or low paid) 'internship' will be considered legal.

Where the internship is organised by a university or vocational training organisation then it will be unlikely that an employment relationship exists and you will be able to offer an unpaid position.

The Fair Work Act 2009 defines the meaning of 'employee' and this definition does not include a person on a 'vocational placement'.



A vocational placement is defined as a placement that meets all of the following criteria:

- it is undertaken with an employer for no remuneration; and
- it is undertaken as a requirement of an education or training course; and
- it is authorised under a law or administrative arrangement of the Commonwealth, a State or Territory.

### **Unpaid Trials to Demonstrate a Candidate's Skills:**

Sometimes a person is asked to do an unpaid trial when being evaluated for a vacant job. This skill demonstration is used to determine if the person is suitable for the job, and is sometimes called a work trial.

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

A work trial is okay when:

- it involves no more than a demonstration of the person's skills, where they are directly relevant to a vacant position
- it's only for as long as needed to demonstrate the skills required for the job
- the person is under direct supervision for the entire trial.

This will be dependent on the nature and complexity of the work, but could range from an hour to one shift.

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 accordingly for all hours worked.

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For example, if someone responds to an ad for a position, and the employer requires he or she work three shifts unpaid, the employer may have to pay for this kind of "trial". This is because it begins to look more closely like an employment arrangement.

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If you are considering conducting a review of your workplace or project employment practices, contact Savvy Human Resources Associates:

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