



Should I be paid for work experience?

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For most people participating in some form of work experience has become a necessity in order to complete their qualification or land that first paid job. Whilst you may have great tertiary or other qualifications on your CV, what's in the 'experience' section, is often minimal or not transferable to your desired profession. However, many purported work experience schemes, or to use the du jour word "internships" are unlawful and little more than schemes by which your labour is obtained without payment.

When considering unpaid work experience or an internship, you should always consider whether this unpaid work experience should in fact be paid work. Unfortunately, most who participate in work experience are not financially renumerated nor guaranteed employment and accordingly, unpaid work experience can end up being a rather costly exercise.

In a 2016 [report commissioned by the Commonwealth Department of Employment to examine unpaid work experience in Australia](#), it was identified that a third of Australians (34%) aged between 18-64 reported at least one episode of unpaid work experience in the previous 5 years.

With the prevalence of internships becoming increasingly common place, that begs the question as to whether internships should be paid?

In fact, the real question is not whether the work experience should be paid but whether the arrangement in place constitutes an "employment" arrangement such that payment must be made.

Determining if it is an employment arrangement or bona fide work experience

Under the *Fair Work Act 2009* (Cth) ('FW Act'), there is one type of work experience which cannot be classed as involving any form of employment and that is a "**vocational placement**". Vocational placements are an important exception to the minimum terms and

conditions of employment in the FW Act.

Based on the FW Act's definition of "vocational placement", someone working for an employer will be exempt from categorisation as a national system employee with the arising obligations where that person:

1. has no entitlement to remuneration (e.g. wage) of any kind; and
2. the placement is a requirement of an education or training course (or associated study component); or
3. that the placement (or potentially the course within which the placement falls) is authorised under a law or administrative arrangement of the Commonwealth, State or Territory; and
4. has been actively "placed" by the relevant educational or training institution.

Examples of a vocational placement:

- A nursing student who must undertake a clinical placement in a hospital as a requirement of their course;
- A law student undertaking the practical component of their practical legal training course in a law firm in order to satisfy the legal practitioner admission requirements.

What if my work experience is not a vocational placement?

Work experience performed outside the confines of a vocational placement may attract a degree of uncertainty as to the actual status of the work experience. Whilst the parties (you and your employer) may assume a given arrangement is work experience, on closer examination it may be the case that the arrangement is an employment arrangement and therefore, your employer \may be in breach of the FW Act by failing to pay the required minimum wage.

Identifying if the arrangement is an employment contract

Some key indicators which may point to the existence of an employment arrangement include:

- an intention to enter into an agreed arrangement to do work for the employer;
- a commitment by the person to perform work for the benefit of the business or organisation and not as part of a running a business of their own; and
- an expectation that the person receive payment for their work.

If the true substance of the relationship is an employment relationship, it does not matter if that relationship is described by any other term or if the worker is acquiring additional skills and experience; it will be an employment relationship and the party performing the work experience has a legal entitlement to be paid.

Is there an organisation that monitors unpaid work experience?

Yes – Unions! The best protection available to workers is to join their Union. Unions can provide you advice on the particular arrangement and whether it is lawful. Unions have been repeatedly successful in recovering unpaid wages for their members arising from dodgy internships and work experience rots.

If you are not a member of a Union, aside from having a good long hard look at yourself, you can seek information from, the Fair Work Ombudsman ('FWO'). In recent years the FWO has taken proactive steps in determining the legality and legitimacy of unpaid work experience by scrutinising instances of unlawful unpaid work experience, job placements and internships.

In 2015, the FWO fined a radio broadcaster for underpaying two university students who worked for many months as radio producers. The FWO described the arrangement as being 'exploitative' and emphasised that 'profiting from "volunteers" is not acceptable conduct'.

Another case in which the FWO intervened involved a company that was fined over \$280,000 where an event planner had to perform 180 hours of unpaid work as an intern before being given paid employment.

The answer to the question depends on the nature of the work experience arrangement

Many job seekers would not stop to think about the true nature of their unpaid work experience arrangement. They unfortunately simply accept the lawfulness of what their employer is doing. The requirement to have experience in addition to tertiary qualifications is so important, and competitive, that most job seekers may not concern themselves with how they get that experience and whether it is unpaid, just so long as they get it.

But this does not negate the fact that there will be many instances of unpaid work experience that are unlawful and the pursuit for career advancement should not come at the cost of an individual being exploited.

Are you doing unpaid work experience which you think should be paid employment?

As you can see from the examples above, you would not be alone. Unfortunately, there are unscrupulous (or ill informed) employers out there. If you'd like to investigate the conditions and legality of your work experience placement, feel free to get in touch directly with today's author, solicitor in Industrial & Employment Law, Kathryn Lohman.

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