

Fact Sheet

EMPLOYMENT LAW



Work Experience and Trials - are Wages Required?

It is common practice for employers to take on persons for work experience and/or unpaid trials before agreeing to offer paid employment.

A report commissioned by the Fair Work Ombudsman into the nature, prevalence and regulation of unpaid work experience arrangements has recently been released¹. The Fair Work Ombudsman announced that he will be taking an active interest in the legitimacy of schemes for unpaid work experience.

Accordingly, employers should be aware they will be required to pay wages to a person performing work experience or an unpaid trial if an employment relationship has been created in accordance with the **Fair Work Act 2009** (Cth) (**FW Act**). Unfortunately, the FW Act provides little guidance to enable employers to conclusively determine whether an employment relationship has been created.

We recommend that as an employer you consider whether the person is

being provided with an opportunity to observe and gain first-hand experience of the business or whether he or she is performing work which benefits and adds value to the business. In the later circumstance, the employer has quite likely created an employment relationship with the person and is therefore required to pay wages.

In these circumstances we recommend that an employer seek legal advice as to whether they have obligations pursuant to any modern Award, the FW Act or an enterprise bargaining agreement.

Failure to pay wages in accordance with the FW Act and any modern Award could potentially expose the employer to a claim for underpayment of wages and a civil penalty under the FW Act².



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1. Stewart, Andrew and Owens, Rosemary, 'Experience of Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia'

2. s 539 Act



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