

Am I being treated fairly at work?

What are my employment rights?

Where do I go for help?

Unpaid Trial Work

DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

THE MOST IMPORTANT THING YOU SHOULD KNOW ABOUT UNPAID TRIAL WORK:- IT RARELY LEADS TO PAID WORK! A JobWatch survey showed that in only 13% of cases was a paid position offered after the completion of an unpaid trial.

What is unpaid trial work?

Unpaid trial work occurs when an employer asks a job applicant to work as an employee for a “trial period” and does not pay wages for the period worked.

Voluntary work is not unpaid trial work. When someone volunteers their services they do so for reasons which can include gaining experience in an area they want to work in or working for a community or charitable organisation. The possibility of an offer of employment is usually not in consideration.

You should always be wary about agreeing to work an unpaid trial period for any potential employer.

The main reasons job seekers are willing to undertake unpaid trial work are:

- they assume that they will be paid for any work carried out;
- the employer has had led them to believe that they have already been offered the job;
- they believe that an employer is legally entitled to get applicants to work for a trial period without pay; or
- they are desperate to do anything which could lead to a job, even if the chance of getting paid work is small.

Unpaid trial work is increasing

Employers usually say that the practice of unpaid trial work is increasing. We know of unscrupulous employers who continually employ people on an unpaid trial basis because it is cheaper to keep advertising a job than to pay wages.

JobWatch callers who have complained about unpaid trial work had heard about their jobs in newspapers, at an employment agency, by “word of mouth” and from notices in shop windows.

Typical situation

Rae sees an ad at her job centre for a kitchen hand in a pizza bar. She applies for the job, the boss asks her to come in and see him. Then he says he would like her to do a week’s ‘trial’ in the job and if she is good, the job will be hers. Rae completes the week’s trial, does not get the job and does not get paid.

Everybody should be entitled to be paid for trial work

Trial work can be for a few hours, a few days, a few weeks and sometimes even a few months. It can be in a shop, an office, a pub or restaurant, a health centre, a factory, a solicitor's office. You can be asked to wait on tables, dig a garden, work a machine in a factory, clean a building, wash dishes, type or answer phones.

Unfortunately unpaid trial work happens in most industries and occupations. Sometimes the employer will be up front about the fact that there will be no wages, but most often nothing is said about the wages at all. Then, when the job seeker asks about the wages, he or she is told that the trial period was unpaid work.

Your rights

All employees are entitled to proper working conditions while on trial.

Depending on the work done and the terms and conditions the work was commenced under, there are a range of legal requirements an employer must comply with.

Proper conditions include the right to:

- a healthy and safe workplace;
- minimum terms and conditions of employment (see below);
- be paid the legal minimum rate of pay;
- receive regular pay slips and to have tax deducted from your wages;
- have superannuation contributions made on your behalf (if eligible);
- join a union;
- Workcover insurance in the event of a work related illness or injury, and
- a workplace free of discrimination.

Employer obligations

An employer using the practice of unpaid trial work may be engaging in the following unlawful conduct:

- failure to provide minimum terms and conditions of employment, such as failure to pay minimum wages or allow meal breaks;
- failure to record employee information;
- misleading conduct;
- failure to comply with requirements relating to WorkCover, payroll tax, income tax etc.; and
- breach of contract.

There are various forms of protection for workers that are set down in law.

The following information applies only to national system employees — are you a national system employee?

The following information is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use the following information unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use the following information unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use the following information unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

Minimum terms and conditions of employment

You cannot receive employment conditions that are less than the legal minimum standards. The legal minimum standards are set out in modern awards, enterprise agreements and the National Employment Standards under the *Fair Work Act 2009*. An employment contract containing terms and conditions that are lower than the minimum standards is unenforceable in relation to those terms and conditions and the Fair Work Ombudsman (FWO) or your union may be able to recover money owed to you.

The Nation Employment Standards

The National Employment Standards (NES) sets out ten minimum conditions of employment for all employees.

For example the NES provides for:

- a maximum of 38 ordinary hours of work per week plus reasonable additional hours;
- four weeks' annual leave for permanent full time employees (pro rata if part time);
- ten days' paid personal leave (including sick and carer's leave) for permanent full time employees (pro rata if part time) plus two days' unpaid carer's leave per occasion for all employees, including casuals;
- two days' paid compassionate leave per occasion for permanent employees;
- 12 month's unpaid parental (maternity, paternity or adoption) leave for eligible employees; and
- minimum notice of termination and redundancy pay for eligible employees.

To find out whether your employment is covered by an award or agreement, and what conditions you are entitled to, contact the Fair Work Infoline on 13 13 94.

Modern Awards

Most employees are also covered by a modern award or enterprise agreement. These provide minimum conditions additional to those set out in the NES and also provide for minimum wages.

If you were an employee and have not been paid, you have 6 years to file a claim in court from the date the money was due to you. You should make a FWO claim first – see 'Where to get help' below.

Where to get help

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| Fair Work Infoline (Office of the Fair Work Ombudsman) | 13 13 94 |
| Fair Work Commission Helpline | 1300 799 675 |
| JobWatch <i>(Telephone interpreters available for non-English speakers.)</i> | Metro: 9662 1933 Rural: 1800 331 617 www.jobwatch.org.au |
| ACTU Worker Information line (for referral to a union): | 1300 362 223 |

JobWatch acknowledges and is grateful for the financial and other support it has received from both the Commonwealth of Australia Attorney-General's Department, the Victorian State Government and Victoria Legal Aid.

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.