

Employment Scams

In this Fact Sheet, we look at a common 'scam' in employment – misleading employment advertising.

Misleading Employment Advertising

Ads can be misleading because:

- they simply don't have enough information; or
- they are written to deliberately mislead you, because they want to hide from you what the job really is; or to make you think there's a job when there isn't.

Ads may mislead you about the availability, nature and terms or conditions of employment. They may appear in newspapers, be advertised on social media, or sent directly to you as an unsolicited text message.

It is unlawful for job ads to include pay rates that are less than minimum entitlements - for instance, that offer less than minimum wage, or less than the relevant Modern Award or Enterprise Agreement pay rate. These ads can be reported to the Fair Work Ombudsman.

Misleading job and business opportunity ads are unlawful under the Australian Consumer Law. They should be reported to the relevant authorities:

- The Australian Competition and Consumer Commission (ACCC) which administers the Competition and Consumer Act; and
- Consumer Affairs Victoria; or
- Office of Fair Trading - Queensland; or
- Consumer, Building and Occupational Services – Tasmania.

What you should do

You should always find out more information from the employer. For example, you should find out about:

- the employment status (i.e. would you be a permanent/casual/fixed term employee? Will your hours be full time or part-time? Alternatively, will you be an independent contractor?)
- what type of work you would have to do (i.e. what are your duties)?
- if you would be covered by a Modern Award, Enterprise Agreement or an employment contract
- how much, when, and how you would be paid
- whether the gross pay includes or excludes superannuation
- where the employer operates from, etc.

You should receive direct answers to your questions. If the employer is avoiding answering any of these questions, then take this as a warning sign.

Note!

Misleading ads should also be reported to the publisher of the ad, so the ad can be pulled or modified.

Disclaimer

This Fact Sheet 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 Fact Sheet is designed for employees and prospective employees in Victoria, Tasmania and Queensland only. If you are not from these states, you should obtain advice about your specific case as soon as possible.

What you shouldn't do

In some ads, only a post office box, social media profile, mobile number or email address may be supplied. Think very carefully before sending identifying information about yourself to an unknown person through these contact methods, including photos of licences or passports, or bank account details.

Things to watch out for

1. Jobs that aren't real jobs

Some ads appear to offer jobs. But when you go for an 'interview', you are pushed hard to buy something - e.g., health products, kitchen utensils or cosmetics kits. They might say 'buy this and we guarantee work'. But the aim is just to sell products to you.

2. Misleading income claims

When an ad says something like '\$1000 per week for the right person', be aware that these ads can mean low pay, or no pay, and long hours.

3. Training courses disguised as employment

The ad may look like it is calling for job applicants – e.g. 'beauty advisers wanted' or 'graduates in demand'. Really, they just want you to pay for a course. Remember that no course can guarantee a job, and in some cases you don't need to do a course to get a job. If in doubt, always seek advice.

4. Contracting jobs disguised as employment

Contracting is not employment. If you become an independent contractor, it means you become self-employed. For further assistance, contact JobWatch, your union or a lawyer before signing anything or saying yes to something that sounds like contracting.

5. 'Commission only' jobs

Beware of jobs that pay only by commission. When companies claim they pay a retainer, check that it is not taken out of commissions earned later.

6. An instant interview

If you are granted an interview over the phone, be suspicious. This might mean: 'Bad conditions! We don't need to short-list applicants because you probably won't stay long once you find out what the job really is.'

Types of Working Arrangements

Employees perform duties under the direction and control of an employer and receive a wage in return. They may also be entitled to other employment conditions or entitlements such as paid annual (holiday) leave, sick leave, travel allowances etc. These entitlements may vary depending on their employment status (e.g. permanent or casual) and whether they are covered by a Modern Award, Enterprise Agreement or just their employment contract.

You should call the Fair Work Ombudsman to confirm your entitlements, including the minimum rate of pay. As an employee, you are covered by WorkCover for work-related injuries, your employer usually makes superannuation contributions on your behalf and is responsible for deducting tax from your pay.

Note!

See the JobWatch Fact Sheets on 'Private Training Courses' and 'Independent Contracting Traps' for further information.

Fair Work Ombudsman

Phone: 13 13 94

Website:

fairwork.gov.au

Types of Working Arrangements (cont.)

Contractors are self-employed. The law treats contractors as essentially running their own business. This means you usually give the person you work for an invoice with your ABN so they can pay you. You must pay your own tax.

You do not get paid sick leave, holiday pay or travel allowances, and usually the company you work for will not make superannuation payments on your behalf. Also, you may not be covered by the company's WorkCover insurance policy.

Dubious operators advertise for employees, and then ask applicants to sign a contract at the interview which makes them sub-contractors or independent contractors. If you are a genuine sub-contractor or independent contractor, you have control and direction of your own work, the way you do it and when you do it.

Commission - Some companies offer commission on top of a guaranteed basic wage, others pay commission only. Note that all employees are entitled to at least the minimum pay rates set out in any applicable Modern Award (or the minimum wage if no Award applies), even if a commission-only system is in place. Check out all claims made about commission and how realistic they actually are. For example:

- What is the average commission per employee?
- How many people have worked for this company in the past 12 months?
- How many of those people still work for them?
- How many appointments were made?
- How many resulted in sales?
- What is the exact commission rate?
- Is the commission payable for appointments made or actual sales?
- Do you get paid your commission when a sale is confirmed or only when the client has actually paid?

Note!

If you do sign a sub-contract or independent contract agreement, make sure you are working with a viable business. See JobWatch's 'Independent Contracting Traps' Fact Sheet for further information.

Note!

Always keep your own precise records of sales (including how many, how much each sale was worth, clients' name and contact details of each client, the hours and dates you worked etc.).

Where to get help

JobWatch's free and confidential Telephone Information Service

P: (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

W: jobwatch.org.au

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission	1300 799 675
Australian Competition and Consumer Commission (ACCC)	1300 302 502
Consumer Affairs Victoria	1300 558 181
Office of Fair Trading Queensland	13 74 68
Consumer, Building and Occupational Services Tasmania	1300 654 499
Australian Tax Office	13 28 61
Community Legal Centres Australia	02 9264 9595
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	03 6234 4133

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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.