

ALERT

INTERNSHIPS: WORK EXPERIENCE OR EXPLOITATION?

There are a number of benefits to organisations conducting workplace internships, including allowing organisations to assess the suitability of candidates for future employment opportunities and gaining access to young minds without all of the obligations associated with an employment relationship. The Federal Government's new Youth Jobs PaTH Program has also made internships more attractive by offering financial incentives to businesses that conduct internships. However, there have been a number of recent cases which have highlighted the need for businesses to ensure that any internships they conduct are lawful and do not expose the organisation to the various sanctions available for breaching minimum employment obligations.

What is an Internship?

Under the *Fair Work Act 2009 (FW Act)*, it is lawful for businesses not to pay a person who is completing a vocational placement. In summary, a vocational placement is a formal work experience arrangement that is part of an education or training course. They are common in certain industries, such as the hair and beauty industry.

Under the FW Act, a vocational placement is lawfully unpaid if the placement is a required component of the course as a whole or of an individual subject or module of the course. Further, the institution delivering the course which provides for the placement must be authorised under an Australian, state or territory law or an administrative arrangement of the Commonwealth or a state or territory to do so.

If an internship is not a vocational placement as described above, it may still be lawfully unpaid if the arrangement does not give rise to an employment relationship at law.

The key factors which generally indicate that a person is an intern and not an employee at law are as follows:

- The person is not doing "productive work";
- The main benefit of the arrangement is to the person doing the placement and not the business;
- It is clear that the person is receiving a meaningful learning experience, training or skill development.

Recent Case

In June 2017, the Fair Work Ombudsman announced it had initiated legal proceedings against a fashion industry start-up that appeared on the reality TV show 'Shark Tank' for allegedly running an unlawful unpaid internship program and underpaying three workers more than \$40,000. The company, Her Fashion Box, sells online subscribers 'fashion boxes' containing fashion accessories and beauty products. It is alleged the three individuals, aged in their mid-20s, were variously underpaid their minimum hourly rates, overtime, public holiday pay and annual leave entitlements. One individual, a graphic designer who had completed a university degree, allegedly worked two-days per week for almost six months without pay under a purported 'unpaid internship' before receiving a one-off payment of just \$1000. Another graphic designer was allegedly underpaid a total of \$15,511 over a period of two years of full-time work. The third person, engaged on a full-time basis as a brand partnerships manager, was allegedly underpaid a total of \$18,119 over a 12-month period.

Implications for employers

While there are numerous benefits to conducting internship programs, it is important that businesses ensure that any such programs are true internship arrangements and not employment arrangements. This is likely to be relatively straightforward when the arrangement is offered as part of a vocational placement. However, in all other cases, businesses should ensure that any internships are offered as part of a formal program that is designed to provide a meaningful learning experience for the interns. To try to avoid any confusion or potential disputes about the arrangement, it is also advisable that businesses enter into written agreements with interns which clearly specify the nature of the arrangement and its terms and conditions, including the period of the internship and any allowance or reimbursements to be paid to the interns.

Disclaimer

The statements herein are not intended to amount to advice and should not be relied upon without first obtaining specific advice applicable to your situation.

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