

How to spot a dodgy internship

Internships can be a great way to get industry experience; however, there are certain things you need to know before becoming an intern. There are plenty of dodgy internships out there – here's the lowdown on what constitutes an internship, what your rights are, if you can expect to get paid and what you need to know about trial periods.

What is an internship?

An internship is a popular and valuable way to gain exposure to a field or profession, gain important on-the-job skills, network with professionals in the field and in some cases, internships can be the first step towards permanent employment. “Internships vary drastically in their nature, and range from informal work-experience arrangements through to de facto job trials,” says Trent Hancock, the Principal Lawyer at employment law firm [McDonald Murholme](#).

If you are an unpaid intern, then you really should only be doing tasks that further your learning and work experience. If you are doing tasks that benefit the business, then it's likely you should be getting paid.

With regards to interns, the law is primarily interested in whether an employment relationship has been created between the intern and the employer. In general, if an intern is only observing and learning then no employment relationship has been created, however, if you are doing work that profits the business, then it's likely an employment relationship exists.

It is [less likely that an employment relationship](#) will be found in workplaces where volunteer work is commonly undertaken, such as the not-for-profit sector.

What rights do interns have?

According to Hancock, interns have very similar rights to employees, under the Fair Work Act 2009. Hancock nominates several common rights that may arise or be an issue in an internship:

Paid Annual and Personal Leave

“Whether an intern is entitled to statutory leave entitlements depends on the nature of their employment agreement,” says Hancock. “Interns that are not entitled to remuneration will also not be entitled to paid leave. However, where an employment relationship has been created the intern may be entitled to paid leave.”

“If the intern is a full-time employee on a fixed term contract (the most common paid internship arrangement), then the intern will be entitled to accrue and take paid leave just like any other full-time employee,” says Hancock. “However, if the terms of the employment agreement are such that the intern is engaged and paid on a casual basis, then the intern will not be entitled to paid leave (but instead will be entitled to a 25% casual loading).”

OH&S

“Interns, like employees, have the right to a working environment that is safe and without risks to health under the Occupational Health and Safety Act 2004,” says Hancock. “Furthermore, they have the right to make a complaint or inquiry in relation to safety issues, or in order to seek compliance with safety standards.”

Complaints

“Interns have the right to make complaints in relation to their employment, and the right not to be subjected to detriment due to making a complaint,” says Hancock.

What about remuneration?

Whether an intern is entitled to payment for their work depends on whether the circumstances of their arrangement creates an employment relationship.

“If an employment relationship exists, then the intern will be an employee for the purposes of the Fair Work Act 2009 and will be entitled to remuneration accordingly,” says Hancock. “Broadly speaking, if the intern performs productive work that benefits the business and the business makes a profit from or charges for the work of the intern, then an employment relationship will exist, and the intern is entitled to remuneration.”

The current [national minimum wage](#) is \$21.38 per hour*, and this would be the starting point for an intern who is in an employment relationship.

The top 3 things an intern should do before starting work:

- Know your status. Has an employment relationship been created between you and the workplace?

- Have a clear idea about your expectations. What are your reasons for undertaking an internship? What do you hope to gain from it?
- Have a discussion with your employer about their expectations, including what tasks you be required to do, how often, and for how long.

Signs of a dodgy internship

“A dodgy internship is one where the employer misclassifies an employee as an unpaid intern in order to avoid paying the employee for their work,” says Hancock. “Under this sham arrangement, the intern contributes to the operations and profitability of the business without being remunerated for their work. As a general rule, if an intern is performing the work of an employee, they should be paid.”

Hancock adds that an additional sign of a dodgy internship is where the internship is ongoing and indefinite. “Where there is no end date, this points strongly to an employment arrangement and therefore the right to remuneration,” he says.

Internships can be the key to unlocking a successful career within your chosen industry, however, it is important to understand whether an employment relationship has been created in the eyes of the law.

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