

Trial Work

What is trial work, and does an employer have to pay you for it?

Often when a young person gets a job, they will be called in to do some trial work for a few hours or a few days, to give the boss a chance to see whether they are suitable.

Trial work is common in industries that employ casual labour, such as:

- Restaurants and cafes
- Clothes shops and other retail outlets
- Clubs and pubs

Is a trial period the same as a probationary period?

All workers across all sectors of employment are subject to a qualifying period – but there are differences between the concept of a “probationary period” and “trial work”.

Probationary periods are commonly formalised in Awards, agreements and employment contracts. These periods tend to be longer in duration and the terms of the probationary agreement are more *certain*.

For example, Awards often stipulate:

- A fixed duration of the probationary period (often 3 months) to be agreed in advance; and
- that wages are to be paid; and
- the appropriate wage rate.

During a probationary period a boss may end the employment relationship if you are not suitable for the job. However, a boss may not dismiss you during a probationary period because of illness, age, race, sex, sexuality, family responsibilities, and disability or for being a member of a trade union. If this happens please contact the YWLS as soon as possible.

Excluding formal work experience arrangements, you must be paid for all work performed during your trial and/or probationary period. No worker is expected to

perform work for free. You must be paid under the applicable award rate. **It is unlawful for an employer to require an unpaid trial period.**

Are there any exceptions to this requirement that employers pay for trial work?

There is an exception for work experience. Under the law, unpaid work experience is allowed, but only when that work forms part of an *approved* work experience program connected with a school or other educational institution. An employer can't just declare that the worker is on work experience. He or she must get into contact with an appropriate training body and set up a formal work experience arrangement. This is necessary not only to ensure general fairness to the worker, but also to satisfy insurance requirements.

Can an employer claim you are a volunteer, and get out of paying you that way?

The law does not permit workers to agree to work - or offer to work - on a voluntary basis for a commercial business. Nor does the law permit commercial employers to *impose* volunteer status on workers.

The reason for this is that volunteer work is designed to serve a very narrow purpose in society -to provide a way for individuals or groups to address human, environmental and social needs.

As a result, volunteer work in Australia is regulated by the following principles:

- It is an activity performed in the *not-for-profit* sector ONLY
- It should NOT be a substitute for paid work, or constitute a threat to the job security of paid workers

These principles ensure that the charitable notion of volunteer work is not hijacked by employers and used as a mechanism for slave labour.

Some employers claim that they didn't have to pay wages because the worker was never an employee; rather he/she was a contractor. How do you argue against this?

Bosses will claim that you are not an "employee" for the simple reason that the title of "employee" triggers their obligation to pay you wages. However, just because your boss *says* you're not an employee, doesn't mean this is true. The question of whether you are an employee is determined by the law.

What this means is that;

- if the business is operating on a commercial basis; and/or
- if the worker is working under the *control* of the boss ...

... the worker will most likely be an employee, regardless of what the boss says, and regardless of whether the worker has signed a contract of employment.

To establish *control*, the courts ask questions like:

- Do you wear a company uniform?
- Does your boss dictate what your hours will be?
- Were you told your rate of pay or did you negotiate it yourself?
- Were you free to leave the workplace whenever you wished?
- Do you work under the guidance and direction of your boss?
- Does he have the final say over *how* you perform your work?
- Were you entitled to delegate your work to someone else?

According to the courts, if your answers suggest that you were under the "control" of your boss, you are an employee, which means you are entitled to wages.

How can you protect yourself against exploitative practices such as unpaid work?

When you start any new job, you should ask your employer about:

- The name of the award or agreement that covers your job;
- Whether the job is full-time, part-time or casual;
- What wages and allowances are payable to you;
- Your duties and the classification of your job (ie job title) and;
- Whether there is a trial or probationary period.

Only if you ask for this information will you know what you are getting yourself in to. Being fully informed about your conditions is essential to protecting and enforcing your legal rights.

What should you do if you know or suspect that you haven't been paid properly?

First and foremost, keep a record of all the hours you are working, along with how much you are being paid and when. You should then take those records to your union or the YWLS so that we can help you with your calculations and the lodgement of an underpayment claim.

If you have not kept good records, you can request copies from your employer. If you are refused access, you should speak to your union, or if you are not a member of a union, you should contact the YWLS, about alternative methods of obtaining copies of time and wage records.