

FACT SHEET: LEGAL INTERNSHIPS IN NSW

The Law Society of NSW has developed this fact sheet to assist its members and future members to understand their rights and responsibilities under current laws in relation to both paid and unpaid legal internships.

The Law Society of NSW recognises the importance of internships and work experience for law students and law graduates, and the role law practices can play in providing these opportunities.

The Law Society of NSW is aware that aspects of this area of law are complicated and that this may present difficulties for some interns and law practices seeking to understand how the law applies to their own situation. While there is no precise definition of the term “intern” in the *Fair Work Act 2009* (Cth), the legislation clearly stipulates that unpaid internships will only be legal if they are part of a vocational placement, or where an employment relationship does not exist.

Law students, graduates or new lawyers should not be offered unpaid work experience outside of lawfully unpaid vocational placements or a genuine volunteer arrangement.

Employers may engage interns for the following reasons:

1. To give a person experience in a job or industry.
2. To test a person’s job skills to retain for future employment.
3. To make a positive impact on the local community.
4. To build networks with local universities and increase brand recognition.

LEGAL FRAMEWORK

Unpaid internships are not illegal if they are part of a vocational placement or if an employment relationship does not exist.

Vocational placement

Under the *Fair Work Act 2009* (Cth), which covers most Australian workplaces, a vocational placement can be lawfully unpaid if the following criteria are satisfied:

1. the person is not entitled to receive remuneration;

2. the placement must be completed as a requirement of an education or training course; and
3. the course must be one that is government approved, i.e. the institution delivering the course must be authorised under an Australian state or territory law.¹

Practical Legal Training undertaken to attain a Graduate Diploma of Legal Practice falls within the ambit of vocational placement.²

The existence of an employment relationship depends on the facts of each case. Where the unpaid legal intern receives the main benefit, it is less likely to be considered an employment relationship.³

Employment relationship

An unpaid internship will be unlawful if there is an employment relationship. If an employment relationship exists, the individual is entitled to a minimum wage and benefits under the National Employment Standards and enterprise agreements. The existence of an employment relationship is determined on a case-by-case basis. Key indicators of an employment relationship include:

- **Length of time:** Generally, the longer the period of the arrangement, the more likely the person is an employee.
- **Significance to the business:** If a person is doing work normally completed by an employee or organisation, there is a strong indicator that there is an employment relationship.
- **The nature of the benefit of that work:** If the business or organisation gets the main benefit from engaging the person and their work, the person is most likely an employee.
- **The duties of the person carrying out work:** If the person is not expected or required to attend work or undertake productive activities, they are *less likely* to be an employee (albeit the person may still perform some productive activities that form part of their learning experience, training or skill development).⁴

The Law Society of NSW is aware that not-for-profit and community legal centres (“CLCs”) may offer unpaid legal internships to law students or graduates in order for them to undertake genuine pro bono or volunteer legal work. The Fair Work Ombudsman website states that where the main purpose of a volunteer is to benefit someone else, it is less likely that an employment relationship will be found to exist.



Minimum rates of pay for law students and graduates working in the private sector in New South Wales are set out in the *Legal Services Award 2020*. For other employers, including CLCs and government agencies, check the particular instrument governing rates of pay in their workplace, e.g. award, agreement, etc.

Whether paid or unpaid, an employee or a volunteer, the person performing work will be regarded as a 'worker' for the purposes of work health and safety laws. They should also be reimbursed for expenses required to be incurred on behalf of the employer.

CONTACT

The Fair Work Ombudsman offers reliable and up-to-date information about Australia's workplace relations system and, in some circumstances, will litigate to enforce workplace laws.

If you are seeking further assistance, you can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

RELEVANT RESOURCES

- Australian Government, Fair Work Ombudsman, *The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia: Experience or Exploitation* (January 2013) <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/research-reports>
- Australian Government, Fair Work Ombudsman, *Experience or exploitation – infographic* <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/research-reports>
- Australian Government, Fair Work Ombudsman, *List of awards* <https://www.fairwork.gov.au/awards-and-agreements/awards/list-of-awards>
- Australian Government, Fair Work Ombudsman, *Unpaid work* <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/unpaid-work/unpaid-work>
- Australian Government, Fair Work Ombudsman, *Work experience & internships* <https://www.fairwork.gov.au/pay/unpaid-work/work-experience-and-internships>
- *Fair Work Act 2009* (Cth)

- *Fair Work Ombudsman v Crocmedia Pty Ltd* [2015] FCCA 140
- Law Institute of Victoria, *Unpaid Internships: Information for Law Practices* (June 2018) <https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/InfoLawPractice.pdf>
- Law Institute of Victoria, *Unpaid Internships: Information for Unpaid Interns* (June 2018) <https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/InformationUnpaidInterns.pdf>
- Law Institute of Victoria, *Unpaid Internships: Consequences for Unpaid Interns and Law Practices* (June 2018) <https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/Consequences.pdf>
- *Legal Services Award 2020*
- *Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015* (NSW)
- *Mr Mitchell Klievens v Cappello Rowe Lawyers* [2017] FWC 5126
- The Law Society of New South Wales, *Clerkship Programs* <https://www.lawsociety.com.au/legal-communities/law-students/internship-program/clerkship-program>
- The Law Society of New South Wales, *Graduate Programs* <https://www.lawsociety.com.au/legal-communities/law-students/graduate-programs>
- The Law Society of New South Wales, *Practical Legal Training Providers* <https://www.lawsociety.com.au/practical-legal-training-providers>

Endnotes:

1. *Fair Work Act 2009* (Cth) ss 12–13.
2. *Mr Mitchell Klievens v Cappello Rowe Lawyers* [2017] FWC 5126, 45.
3. *Ibid* 56–58.
4. *Ibid* 47–58.