

EMPLOYMENT LAW DEPARTMENT

Work Experience Students – Avoiding Employment Risks

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Do employers have to pay “work experience” students at least minimum wage?

Many companies, regardless of size, need to make sure they are treating work experience students correctly, particularly in relation to payment, as to do otherwise can result in employers falling victim to the adage “no good deed goes unpunished”.

A work experience student can be unpaid. This can happen if the arrangement is a purely a vocational placement (or part of an education or training course) or if the student is of compulsory school age.

Other than these two exceptions, an employment relationship may be created with the student, even for the very short period of time that work experience students are with a company or organisation. If this is the case the student will be entitled to be paid at least the National Minimum Wage applicable to their age and will also accrue paid annual leave.

The following factors will help determine if the student should be paid:

- Will the student be doing any productive work – or will they only be “shadowing” your employees?
- Is the main benefit of the experience for the student, who is receiving a meaningful learning experience, training or skill development?
- Or might the student be doing some “real” work for you – even if of the simplest kind?
- Is the student required to work during set hours and days?
- Does the student hope to get something in return (such as a job in the future) or is the business using the work experience period as a ‘trial run’ while getting the benefit of some productive work being performed by the student which would otherwise have to be done by another worker.

The answers to these questions will help to determine if an employment relationship might exist. If such a relationship does exist then there is the obligation to pay at least the National Minimum Wage.

A less “legal” but still important point to consider is the fact that some organisations who have continued with unpaid work experience programmes or internships have received very negative media attention even when they may not have a strict “legal” obligation to pay.

This kind of publicity is unlikely to be the expected result of trying to provide a valuable work experience opportunity.

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