

Unpaid Work Experience: A Union Perspective
Speech by ACTU President Ged Kearney at the launch of the
Fair Work Ombudsman Report on Internships, Work Experience and Unpaid Work
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***** CHECK AGAINST DELIVERY*****

It's good to see such a broad mix of people here today from a range of backgrounds, including unions, employer associations, members of the media, the academic community and government, and this just goes to show what an important issue unpaid work has become.

I want to acknowledge the hard work of Adelaide University academics, Professors Rosemary Owens and Andrew Stewart, for producing this very comprehensive report that's shining a light on what is clearly a growing trend. I also congratulate the Fair Work Ombudsman, Nicholas Wilson, for recognising the problem and initiating this research.

Unpaid work is a growing problem

I understand that this research started because the Ombudsman was fielding an increasing number of calls and complaints from members of the public who had been asked by their employer to perform some kind of unpaid work.

Within the union movement, it has been our experience that these types of complaints are becoming more and more widespread. The ACTU runs the Unions Australia Call Centre giving general industrial advice to workers from around the country, frequently non-union members.

In the first half of last year, we did an audit of the number of calls concerning unpaid work arrangements, and found that this was one of the most common areas of concern for our callers. In particular, we fielded inquiries around unpaid training, unpaid work trials, non-payment for higher duties, unpaid overtime, non-payment for setting up before shifts or locking up after shifts, and unpaid meetings.

How do we define unpaid work?

We know from our affiliates that unpaid work can take many forms, and it is can be hard to define and measure the extent of unpaid work. This is partly because, as the report points out, there is actually no definition of an 'employee' under the Fair Work Act, and the meaning therefore has to be established under common law, through the courts.

As a rule of thumb, where someone is contributing to the productivity of a business, under the direction of an employer, then an employment contract exists and they should therefore be paid for the work they do. Of course, there are some genuine exceptions for volunteers working for a not-for-profit organisation, and for students completing a vocational placement as a requirement of their course. But apart from these exceptions, there are many instances where vulnerable people are being taken advantage of through unpaid work arrangements.

Who is doing unpaid work and where?

One of the surprising things we have found when talking to union members and our affiliates is that there are many different types of unpaid work arrangements found in many different industries.

We have seen a number of cases from a range of industries including teaching, engineering and architecture where people are doing unpaid work.

In the retail industry, you are likely to find unpaid 'work trials' that go far beyond a demonstration of skills and can often last for weeks at a time. It's also quite common for employers not to pay staff for the time they spend setting up shop in the morning and then locking up again at night, doing the stocktaking, attending staff meetings and so on.

One of the worst offenders is the media and entertainment industry. It's always been considered a normal part of career development for students to volunteer in community plays or student films, and there's no problem with that. But more and more, young people are being asked to do unpaid work for commercial productions, or in well-known media companies.

This trend is very prevalent in these more glamorous industries such as journalism and PR, where so-called 'interns' are often expected to work for months on end, doing productive work that in other industries would usually be paid, and often with no paying job at the end of it. Unfortunately because jobs in these industries are so in demand, interns often feel like they have to put up with the lack of pay in the hope of one day getting their foot in the door.

Is unpaid work really that bad?

Given the content of the Ombudsman's report, the evidence is very strong that unpaid work arrangements are becoming increasingly common in Australia.

There's no debate there. But I noticed when the report was released that there is still a lot of debate as to whether unpaid work is really all that bad after all. You would think it would be obvious that not paying people for the work they do is wrong, but surprisingly I've noticed a lot of people trying to make excuses for unpaid work arrangements, often on the basis that it provides workers with important career development opportunities or industry contacts. This misconception that unpaid work is somehow acceptable or a necessary evil is something I want to address today.

What we have come to understand in the union movement is that unpaid work isn't just unfair to workers; it's also bad for employers and society as a whole. It leads to a less equal and more insecure society, it forces employers to compete in a race to the bottom, it's bad for the economy and productivity, and it puts at risk some of our most vulnerable members of society, such as young people and international students. In the rest of the time I have today I want to explore some of these issues and make a case as to why unpaid work is such a serious problem, and what we need to do to be able to fix it.

Unpaid work may never lead to a paying job opportunity

There's a misconception that unpaid internships are an important step in a young person's career and a prerequisite to a paying job. For many people that got their career start as an unpaid intern, it's become quite normalised.

But for every intern success story, there are dozens of other unpaid work arrangements that never lead to paid work. Increasingly we find workers moving from one unpaid entry level job to another, sometimes for years on end, without ever getting that first paid opportunity. These people are part of a growing trend of precarious employment and part of the approximately 40% of workers who don't have any job security or paid leave entitlements. These so-called professional interns are being stuck on a conveyor belt of unpaid and insecure work arrangements.

Unpaid work is wrong even if the worker agrees to it

Despite the lack of certainty about whether unpaid work will ever lead to paid employment, it seems there are still plenty of people agreeing to participate in these unpaid arrangements. This has led some employers to argue that unpaid work isn't really a problem because the worker has agreed to the arrangement.

But we have legislated minimum wages and conditions for a reason. Just as an employer can't hire someone and pay them less than the minimum wage, so too an employer can't take advantage of an employee by making them work for free, even if the employee agrees to it. Even in 'glamour' industries where the demand for work outstrips the supply of available jobs, people still have a basic right to get paid a decent wage for the work they do when they're contributing to a company's bottom line. It's not fair of employers to take advantage of this imbalance in the labour market by making people work for free.

It also sets a bad precedent, particularly for those employers who want to do the right thing, because those good employers are forced to compete with the dodgy employers who are relying on free labour to get all their work done. This only leads to a race to the bottom. We need to even out the playing field for employers doing the right thing by making sure we crack down on those doing the wrong thing.

Unpaid work is bad for equality

In the influential book *Intern Nation*, which the FWO report discussed in some detail, Ross Perlin makes the point that only those with financial support can afford to undertake an unpaid internship. In other words, their success in the internship depends on how long they can work for free before the employer finally recognises their work and starts paying them.

Increasingly internships are used to distinguish between candidates for professional jobs, so this means that students from disadvantaged backgrounds are increasingly left behind in their attempts to get professional jobs and career development.

Internships are increasingly the province of students from privileged backgrounds who can afford to go weeks or months without paid work to get their foot in the door. Those from disadvantaged backgrounds working more traditional student jobs in cafes and shops find themselves at a disadvantage because they can't afford to undertake unpaid internships.

Slowly but surely, unpaid internships are widening the gap between rich and poor and exacerbating growing inequality.

Unpaid work is bad for the economy and productivity

It's not surprising that workers who don't get paid for their work also don't pay any taxes or get any superannuation. Although it's difficult to estimate the exact extent of unpaid work, I wouldn't be surprised if millions, or even billions, of dollars are being lost each year in taxation revenue that just isn't being paid.

Let's not forget too that wages aren't just a business expense, they are put back into the economy; people who get paid for their work tend to spend more money on goods and services that keep the economy running.

Australia's productivity slowdown is a big issue at the moment, and there are a lot of misconceptions about what productivity is and how to improve our productivity as a nation.

Unions support productivity growth as one of the surest ways to increase the material standard of living. Put simply, productivity is a measurement of economic outputs, such as goods and services, in relation to inputs, such as labour, land or resources. If you want to increase productivity you have to increase your outputs while decreasing your inputs. Often this leads employers to argue we need to cut wages to increase productivity.

This, of course, is not true. We have right now the lowest unit labour costs in decades. An unmotivated, undervalued workforce will not increase productivity.

Every hour a person works unpaid is an hour that could have been spent, for example, working in a paid position. Productivity growth is achieved by working smarter. Therefore undercutting wages does not lead to increased productivity growth, and in fact there's a very strong case to be made that unpaid work is actually bad for productivity. If it becomes widespread, it will distort entry level positions that in a way is fundamentally exploitative.

Employers who pay their employees properly are making an investment in their workforce. In our experience, those employers that recognise the value of their workforce by paying them appropriately reap the rewards of a more loyal and productive workforce. They are also more likely to invest in appropriate training and skills building which has been proven to increase productivity.

Unpaid work arrangements mean fewer paying jobs

Over the past few decades, many of the paying entry-level jobs that used to exist – for example newspaper cadetships, or editorial assistants at magazines – have shrivelled up and been replaced by an army of unpaid workers on so-called 'internships'.

I've already touched on this argument you often hear from employers, that if you get rid of unpaid internships and other unpaid work arrangements, this will deprive people of the opportunity to get their foot in the door of their chosen industry.

But is this really true? Let's imagine for a moment that all the unpaid interns in Australia suddenly put their foot down and demanded to be fairly paid by their employers. Phones would still need to be answered. Documents still need to be sorted, shredded and typed up. Someone will need to write up the minutes to business meetings. And heaven forbid that a magazine editor should have to buy her own coffee or fetch her own dry cleaning!

The work that these interns were doing would still need to be done by somebody, because it's productive work that contributes to the company's profit margin.

So what we would actually find, if we really cracked down on unpaid work, is an increase in *paying* entry-level jobs. If there were no unpaid internships, people who are entering the labour market for the first time would still find themselves doing entry level work in the industries they want to get into, but that work would be recognised and remunerated. In turn, this would improve the nation's employment rate and lead to more people participating in the labour market.

What can we do about the problem of unpaid work?

If I had more time I could list many other reasons why we should avoid unpaid work arrangements. But based on the evidence we've heard today and the findings in this report, I hope we can all agree that this really is a significant problem. Now it is up to all of us to decide what to do about it.

Unpaid work isn't merely an economic problem. It's a community problem and it demands a community-wide solution. That's why we need to see unions, employers and the government all working together on this issue.

At the ACTU we've taken steps to address the problem of unpaid work, for example, by developing a Young Workers Toolkit that outlines acceptable and unacceptable unpaid work arrangements. But there is still a lot more than the union movement can and should be doing. We will be working with our affiliates to develop a plan of action, including training and educational materials, to make sure that union members are aware they have a right to get paid fairly for the work they do.

But we can't deal with this issue alone. Employers need to deal with this issue head on too. It was pretty shocking to read in the report that one employer association was advising its members that unpaid work trials are acceptable as long as the employee agrees to it.

Employer organisations have a responsibility to their own members to provide accurate advice and make sure that employers are compliant with the law. By making sure all employers are compliant, this will protect those good employers doing the right thing from being forced to compete in an unfair labour market.

Finally, it is good to see that the Fair Work Ombudsman is being proactive about this issue, but there is more that the government could do to reverse this trend. Educating the public is only the first step to dealing with this problem. We also need to see more strategic and targeted enforcement measures as part of a national campaign. It has been interesting to hear of some of the Ombudsman's plans for this already. The union movement is happy to be involved in this and we will try to support these initiatives in any way we can.

Thank you.

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