



# Unpaid work trials

## Principles

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Sometimes a prospective employer will ask a candidate to do a work trial before accepting them for a position.

A work trial can be legally unpaid if:

- a) it's necessary to evaluate a candidate's suitability for the job
- b) it involves no more than assessing the candidate's relevant skills or aptitude
- c) it only lasts long enough to determine whether or not the candidate is suitable
- d) the candidate is under direct supervision throughout the trial

If a work trial lasts any longer than necessary for the candidate to demonstrate their skills or aptitude, the additional time should be paid. The employer could either take the candidate on as a casual employee or for a specified probationary period, and pay them as appropriate for their time.

If an employer benefits financially from what the candidate does in the course of a work trial, they should pay them for the time worked.

## Examples

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### Scenario 1

Jack applies for a job as chef at a local restaurant. He gets an interview and the owner tells him that, afterwards, he'll need to demonstrate his cooking skills by preparing one of the restaurant's specials. Jack agrees.

The owner watches Jack while he cooks, to make sure he knows how to work safely in the kitchen, follows the recipe properly and has the relevant skills.



Jack performs well and the food looks and tastes as it should. The owner offers him the job.

The food is not served to a paying customer, so the business doesn't benefit financially from the work trial.

This is clearly a valid work trial, purely to assess Jack's skills, so the restaurant does not need to pay him for that time.

## Scenario 2

Jessica sees an advertisement on a noticeboard at her university, for a job as a barmaid, to work at a café on Monday, Tuesday and Thursday mornings from 7am to 12pm. The ad says that candidates should ideally have at least three years' experience and be able to make a wide range of coffees.

At her interview, the manager tells Jessica that she will need to work for a week unpaid to give them time to see whether or not she is suitable for the job. If she isn't able to work any of the shifts in the first week, he tells her that she will need to let them know the night before, so they can arrange someone else to cover her shift.

The duration of the 'trial' and the rules imposed suggest that this is actually an employment relationship. Jessica should be paid for all the hours she works, at the appropriate minimum rate of pay.

## Scenario 3

Mina applies for a job as a receptionist at a private clinic and gets an interview.

Afterwards, the manager calls Mina to ask her to do a trial that weekend so they can make sure she can handle working over a busy period. Mina agrees, and goes in to do a shift that Saturday morning.

On the day, the manager shows Mina how to answer the phone, transfer calls, book and cancel appointments and take payments. She spends the morning carrying out these tasks.



At the end of the shift, the manager tells Mina that she has done a good job. However she says that she won't be able to give her a firm offer until after a meeting on the Wednesday. In the meantime, she suggests that if Mina could cover the shifts on Monday and Tuesday, it would demonstrate her commitment and give her a better chance of getting the job. She would not be paid for these shifts.

Although the manager calls the period a work trial, it involves Mina being trained to do key tasks and then carrying them out. Asking her to work on the Monday and Tuesday as well goes beyond what's necessary to assess her suitability for the role.

This is not a legitimate work trial and Mina should be paid for all the hours she works.