

# Fair Work Ombudsman on the case for Young Worker's Rights

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## Introduction:

The Fair Work Ombudsman, Natalie James, recently place all employers on notice in regard to the exploitation of young workers around Australia:

*“It’s time to address the myths that have achieved widespread levels of acceptance and are resulting in employers short-changing young workers...”*

*“.....make up about 16 percent of the Australian workforce but account for a disproportionately high 25 percent of requests for assistance to the agency. Last year 44 percent of the litigations we filed in court involved young workers.”*

*“.... Can be vulnerable in the workplace as they are often not fully aware of their rights or reluctant to complain if they think that something is wrong.”*

*“We also come across too many employers who are short-changing young workers and when we contact they say, ‘I just assumed what I was doing was o.k.”*

The FWO highlighted a number of areas of concern.

This article seeks to clarify and confirm some rights & entitlements young workers must receive.

## Major points of concern to the FWO:

In the absence of an Enterprise Agreement or an *‘Individual Flexibility Agreement’* made in accordance with the *Fair Work Act 2009*, young workers are entitled to the benefits arising from the National Employment Standards and the total, (relevant) terms of the appropriate Modern Award, (e.g; the ‘Amusement, Events and Recreation Award 2010 , and the *Fitness Industry Award 2010*).

The FWO warns against:

- payment of “flat rates”, even if the employee agrees;
- equally, all hours worked are to be paid as such, including periods involving “opening up” and “closing-down” ;
- non-payment for attending ‘mandatory’ staff meetings or training sessions;
- deduction of non-authorised payments from wages;

- payment by way of goods or services “*in kind*”;
- engagement of individuals as “*contractors*” relying upon the individual simply holding an ABN and forwarding invoices for payments;
- classifying individuals as “*trainees*” without the entering into a registered training contract (subject to the operation of Schedule ‘B’ of the appropriate award, an employee can only be classified as an Introductory Level employee (Amusements etc award), or Level 1 ( Fitness Industry) for a maximum of 456 hours of training).

### **Avoid sham arrangements:**

Across a number of sectors, the FWO has successfully pursued employers for award breaches relating to “unpaid internships”. Regardless of how they are dressed-up, the arrangements leading to lengthy periods of unpaid workplace activity, through which the business owner achieves an economic outcome, are a fundamental breach of the Act, and therefore prosecutable.

All arrangements (both legitimately unpaid, or paid as part of “genuine training programs”), to avoid any uncertainty, should be fully documented, and in the case of minors, signed-off by a parent or guardian in advance of commencement.

### **Avoid potential risks:**

If in doubt seek advice from the FWO ([www.fairwork.gov.au](http://www.fairwork.gov.au)) or qualified workplace relations advisors, (such as HMT Consulting).

Further, it is unwise (and often) unsafe to leave a young person in sole control of the operation of a section of a business, or a whole site, no matter how busy or not the work period is.

The ultimate responsibility rests with the business operator.

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