

EMPLOYMENT

ALERT

WORK BUT NO PAY

The labour market is unable to absorb most or all newly qualified work seekers. Matriculants are flooding universities who can't accommodate them. A relatively small number will end up in the training programmes funded by Setas. Some may wish to work for free to obtain suitable experience to rely on to progress to a duly paid position.

The Honourable Minister of Education announced an investigation into whether some of the R10 billion in the hands of Setas can't be used for some form of tertiary education. [Why is there so much money lying around instead of being put to work in training unemployed persons in the much needed skills shortages?]

However, is it permissible to work for free to obtain much needed experience to become a sought after paid employee?

The answer is yes, provided the candidate does so of his or her own free will, it does not constitute slavery or forced labour both prohibited by the Constitution and the Basic Conditions of Employment Act. According to *Joseph v Brothers Beds and Bedding CC (2007) JOL 20570 (BECFMI)*, "Forced labour in the general sense means that the person is held like a prisoner in chains and forced to work, usually for no remuneration."

To a large extent wages are regulated by Bargaining Council Agreements, Sectoral Determinations or Collective Agreements between unions and employers. In order to escape the chains of regulated remuneration, it is advisable rather to take such a willing candidate on as a trainee instead of an employee.

Even so, the presumptions in section 200A of the Labour Relations Act may result in the trainee being regarded as an employee.

Employers who wish to assist candidates in acquiring experience and training are best advised to structure the training programme properly, enquire as to whether funding is available to assist with the costs of training and to some extent still run the risk that the trainees may claim to be employees, whether receiving a bursary or grant from the employer or from elsewhere.

Faan Coetzee

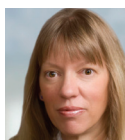
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