**Working for accommodation**

**Labour Inspectorate Position Statement FAQs**

**What is the issue?**

A practice exists where a person does work in exchange for accommodation. In the agricultural industry this person is often called a WWOOFer. In the commercial accommodation sector the term WWOOFer has been generically used to describe a person who does work for you voluntarily in exchange for accommodation, although technically it is not a correct term to use, they are in fact employees.

The practice of using workers and paying them in accommodation has been around for a long time and has been allowed to happen largely unchecked by authorities. Recently, a number of complaints have been received by the Labour Inspectorate at the Ministry of Business Innovation and Employment (MBIE) which has led to the practice being investigated to ensure compliance with an employers legal obligations around employees.

**Why is this happening now?**

In 2016, the Labour Inspectorate received a number of complaints from backpackers, who felt they had been unfairly treated when working in exchange for accommodation, and from the other business operators who felt the business in question had an unfair advantage by using workers but not remunerating them properly. This led the Labour Inspectorate to investigate a sample of businesses to see how big the problem was. The findings of the investigation was that the practice of ‘work in exchange for accommodation’ was endemic in the industry and that a number of businesses had not been meeting their legal obligations to varying degrees.

**Who are the Labour Inspectorate?**

The Labour Inspectorate are the government regulatory authority charged with the duty of ensuring all employees in New Zealand are employed fairly and in accordance with the law.

They don’t make the law, they enforce it.

**What is the Association’s view?**

Hospitality NZ, AccommodationNZ, BYATA, and TIA all agree that all business operators within the industry, irrespective of size, should work within the law.

They want the tourism industry to be regarded as a high value, career aspirational industry which means, at an absolute minimum, all employees should be treated fairly.

For New Zealand to retain a good reputation as a high value, good quality destination it must protect visitors from exploitation and unfair work practices and the Associations are fully supportive of the intent of the Inspectorate’s investigations.

**When do these rules apply?**

Now. The rules have always been there - the only difference is the focus on compliance.

The Labour Inspectorate has recognised there is a period of adjustment required for those who have ‘work in exchange for accommodation’ employees and has given the industry a short period of time (until XXX) to get the correct systems in place to ensure compliance. However, the rules apply now and the sooner changes are made the less likely you will be caught up in follow up investigations which will resume in month 2017.

**What other regulatory bodies are involved in employing staff?**

There are multiple authorities involved including but not limited to:

* IRD
* Immigration
* Worksafe
* Licensing authorities like maritime safety, LTSA etc.
* Tenancy laws apply if accommodation is provided

**Can I just pay a person in accommodation?**

Technically, no.

But practically you can include in your contract the option for a person to be given accommodation as a reward and the value of that reward is deducted from their pay.

You must be able to show separation between the pay and the availability of the reward being taken up.

The job cannot be contingent on the employee staying in the accommodation.

The value of the accommodation must be written down in the employment contract and agreed to by the employee.

If no specific written agreement exists as to the cost of the accommodation the legislation defaults to provisions set out in the Minimum Wages Act, where an employer can deduct 15% of the employee’s wages calculated at the relevant minimum wage rate for board or 5% for lodgings.

Note: Failure to have an employment contract in place is in breach of legal obligations.

*Definition:*

*Board: means the provision of both accommodation and meals
Lodging: means the provision of accommodation only*

**Can I pay partial amounts in accommodation?**

As per above, you can agree with the employee the value of the reward that would be deducted from the pay. For example you may pay for 6 hours work and agree that 2 hours of that will be rewarded by accommodation at an agreed value so long as that value is not less than the minimum wage for the time agreed.

**Why can’t I call these people volunteers?**

The Labour Inspectorate position paper explains clearly how an employee is defined. The opinion of the Labour Inspectorate is that it is highly unlikely that any person working in an accommodation facility would be regarded as a volunteer.

Note that the use of interns is also likely to be regarded as employees and the same rules apply.

**What if the guest agrees to work for accommodation and doesn’t want to sign the paperwork?**

It is not the guest who will be fined and taken to court.

You must have an employment agreement and have all the paperwork available for inspection. If the person does not want to be regarded as an employee, then do not employ them.

**What if they don’t have a work visa?**

It is a criminal offence to aid and abet a person to breach their visa conditions. Immigration penalties are far more severe than Labour Inspectorate penalties. Under no circumstances can you employ people who do not have the right to work here.

**I have employed people for 20 hours a week in return for accommodation, does this mean I’ll now have to pay them cash?**

This depends on the value of the accommodation you offer. Note that the Labour Inspectorate will take a much closer look at longer term employment arrangements whether that be 20 hours a week or less time a week but over a long period.

If you do this as a standard practice and intend to continue doing it, it is even more important to obtain appropriate legal advice.

Example 1

Backpacker/Motel Employer has some casual work available and would like to pay the guest by way of accommodation.

The employer can advertise the job but should make it clear that being rewarded by way of accommodation is optional.

“Cleaner wanted for 2 hours per day - $16 per hour, or in return for shared accommodation.”

* The value of the accommodation must be no less than the equivalent minimum wage plus any holiday pay allowance (8%).
* It should be clear that the reward by way of accommodation is optional so if the person decides they want to stay somewhere else they will not be discriminated against.
* A written contract is required that shows the option of accommodation as a reward, the agreed value of that accommodation and it has to be signed by the employee as clear evidence of that agreement to be rewarded by way of accommodation instead of cash.
* PAYE/ACC needs to be declared by the employer based on the value of the accommodation given
* GST needs to be paid on the accommodation given.
* The employee must have the legal right to work in New Zealand.
* The hours worked cannot exceed the minimum wage equivalent (or whatever the agreed amount was if more than the minimum wage as that puts you in breach of your employment contract).
* It is illegal to demand accommodation be taken at the establishment as a condition of employment.

Hospitality NZ, AccommodationNZ, BYATA and TIA have referred this FAQ page to the Labour Inspectorate to ensure our understanding is correct.

Please note: these Associations are not presenting a legal opinion and we recommend all business operators ensure they fully understand the rules and regulations when employing staff and take legal advice should there be any further questions.

Please refer [www.employment.govt.nz](http://www.employment.govt.nz) for further employment law information