

FAQs Working for accommodation

What is the issue with having people work for accommodation?

A practice exists where a person does work in exchange for accommodation. Some of these workers have been called Willing Workers On Organic Farm WWOOFers or they can be working in the accommodation industry.

In the farming sector the term WWOOFer has been generically used to describe a person who does work in exchange for accommodation or board. However, legally these people are likely employees and must be provided the protections afforded by New Zealand employment law.

This means these workers must be provided their minimum employment entitlements, such as at least the minimum wage, holiday pay, payment of their wages in money and a written contract. Under New Zealand employment law it is not the name of the scheme which is important, but the nature of the relationship.

Why has this become an issue now?

The Labour Inspectorate launched an investigation in 2018 after receiving a number of complaints about the practice, from both workers and other business operators who felt those using the practice were getting an unfair advantage.

The investigation found 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.

The Labour Inspectorate has since communicated these findings to the industry, and expects accommodation providers who have been engaging in this practice to now meet their obligations as employers.

Who is an employee?

It is important for business operators that they correctly classify the legal status of their workers. Following guidance, established by the courts, some indicators that a worker should not be classified as a volunteer, and is potentially an employee include any of the conditions below:

- the worker is being paid for their work – including rewards such as free accommodation or food
- there is an economic gain made to the business from the work performed by the worker
- the work is integral to a business and it is work an employee would normally perform
- the workers' hours of work are controlled.

The Labour Inspectorate's starting position is that such persons will be considered to be employees in an employment relationship.

It flows from this that minimum employment standards will apply, and employers of such employees must meet their obligations which include:

- ensuring employees have a valid right to work in New Zealand
- having employment agreements in writing
- ensuring they are fulfilling the contractual arrangements as specified in their employment agreement.
- paying their employees at least the relevant minimum wage in money
- keeping a record of hours worked, wages paid and leave taken
- providing at least the minimum holiday entitlements
- complying with other legislative requirements, including accounting for PAYE and ACC.

Can you pay a person with accommodation?

You cannot directly pay a person in accommodation only. Payment for work done must be in money.

The employer and employee are free to enter an accommodation arrangement and deduct from wages the reasonable cost of the accommodation. Such agreements need to be in writing.

The value of the work must be written down in the employment contract and agreed to by the employee. The job cannot be contingent on the employee staying in the accommodation.

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

Board: means the provision of both accommodation and meals.

Lodging: means the provision of accommodation only.

Find out more about deductions in the link below:

<https://employment.govt.nz/hours-and-wages/pay/deductions/>

Providing accommodation to an employee in connection with their work makes the value of the accommodation taxable. There are different considerations for tax so find out more from [Inland Revenue](#).

If they are doing this out of their own free will, why aren't these people volunteers?

As 'a person of any age employed by an employer to do any work for hire or reward under a contract of service', they fit the definition of an employee under the Employment Relations Act 2000.

The Labour Inspectorate believes that it is highly unlikely that any person working in an accommodation facility and being rewarded with accommodation could be regarded as a genuine volunteer.

Find out more about who is an employee in the link below:

<https://employment.govt.nz/starting-employment/who-is-an-employee/>

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What if someone is only working a couple of hours a week?

It's not the number of hours a person works that defines whether a person is considered to be in employment.

What can I expect when a Labour Inspector visits my business?

Labour Inspectors make sure that workplaces meet at least the minimum standards and requirements of employment law. To find out more about what a Labour Inspector will be looking for when they visit, check out the link below:

<https://employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/>

So what do I need to do to bring these people into my business?

You must treat them as you would any other employee, providing them with their minimum entitlements, and meeting your obligations as an employer. To find out more about the hiring process, check out the link below:

<https://employment.govt.nz/starting-employment/hiring/>

When you hire an employee you must provide them with a written employment agreement. You can create an employment agreement step by step, customised to meet the needs of your business by going to our employment contract builder. The tool is available free of charge.

Other considerations you will need to take into account are paying the correct tax, and the health and safety of the employees in your business.

<https://www.ird.govt.nz/>

<https://www.worksafe.govt.nz/worksafe>

What if they don't have a work visa?

A person can't work in NZ if they don't have a work permit or visa. It is the responsibility of the employer to make sure that an employee can work for them legally.

It is a criminal offence to employ someone who has no right to work in New Zealand in breach of their visa conditions. Under no circumstances can you employ people who do not have the right to work here.

Employers can find out about a person's visa status using the free online "visaview" tool. Use this link for further information:

<https://employment.govt.nz/starting-employment/right-to-work-in-new-zealand/>

Will this affect other organisations which offer accommodation to their volunteers?

The Labour Inspectorate efforts are focused on businesses using workers for a commercial purpose and not paying them wages, as has been observed in the accommodation and farming industry.

The Labour Inspectorate supports genuine volunteering in New Zealand and is not looking to prevent this from taking place.

Where can I go for more information?

Please refer to www.employment.govt.nz for further employment law information or contact our **Service Center** on 0800 20 90 20.

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