

Dear HR Knowledge: Are prospective employees supposed to be paid for a working interview?

The working interview offers both a chance for an employer to see an applicant's skills in action and an opportunity for the candidate to get a feel for the work and the company culture. Sounds like a win-win, right? It certainly can be, but beware — a working interview is not a **free** trial.

In a working interview, the candidate is asked to perform tasks that are similar to the duties required for the job. While this exercise can be helpful by letting you see how the candidate performs actual tasks, if the candidate is doing actual work — even for just a couple of hours — the candidate must be paid for his or her time under state and federal law.

If you're going to use a working interview as part of the hiring process, you and the candidate have to agree in advance on the payment, which must be at least equal to minimum wage. In addition, you need to treat the candidate the same way you'd treat anyone being added to the payroll, by obtaining employment documents, including a W-4 and I-9, and withholding payroll taxes.

The bottom line is that a candidate participating in a working interview is, by most state wage and hour laws, considered an employee, and that raises a few potential issues. As an employee, even for a day, the applicant could file for unemployment if he or she doesn't get the job. Furthermore, if the candidate is injured during the working interview, your business can be held liable for an insurance claim.

While working interviews might on the surface sound great, they can require a lot of work and time — and what if you decide the person isn't the right fit? A better option would be an “observational

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Interview," where the candidate shadows a staff member in a similar position, and can observe, listen, and ask questions. This benefits you both: You get to evaluate the candidate while the candidate gets a better sense of the job and the culture, and you both can make a fair assessment of whether to proceed.

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