



The employment rights of charity employees and volunteers

Many not-for-profit organisations benefit from the efforts of volunteers in addition to their core teams of paid employees. However, with recent budget cuts and added pressure to keep costs down, these organisations rely more heavily on volunteers. This feature considers the legal status differences between volunteers and employees and highlights key considerations for organisations to bear in mind when recruiting volunteers.

EMPLOYEES AND VOLUNTEERS – A LEGAL STATUS COMPARISON

Employee

Under section 230(1) of the Employment Rights Act 1996, an employee is defined as an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

Key factors indicating an employment relationship include (but are not limited to):

- Mutuality of obligation on the employer to provide work and on the employee to accept work.
- Employer control over the employment relationship and the way in which the employee carries out the work.
- A requirement for the employee to personally undertake the work (i.e. no ability to appoint a substitute).

- Other factors such as a place of work and equipment being provided by the employer.

The statutory rights of employees include the following:

- Written particulars of employment: The employee should be provided with a written statement of the main terms of their employment within two months of commencement of their employment. The main terms of employment include (among other things): the names of the employee and employer, the date on which employment began and on which any continuous employment began, salary details, working hours, collective agreements affecting employment and whether the employee will be required to work outside the UK for one month or more.
- The right not to be unfairly dismissed: Under section 94 of the Employment Rights Act



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1996, an employee has the right not to be unfairly dismissed by their employer. A dismissal will be considered unfair unless the employer can prove one of five potentially fair reasons for dismissal (such as capability or conduct) or the tribunal considers all circumstances (including the employer's size and administrative resources) and finds that the employer acted reasonably in treating that reason as a sufficient reason for dismissal. Generally, employees will require a qualifying period of one year and 51 weeks employment (51 weeks if employment began before 6 April 2012) to be protected from unfair dismissal. There is however a list of automatically unfair reasons for dismissal which do not require a qualifying period of employment. These reasons include: making a protected disclosure under whistleblowing legislation, reasons connected to health and safety and reasons connected to an application for flexible working.

- **Remuneration:** Employees are entitled to be paid at least the National Minimum Wage. Employees are also entitled to an itemised pay statement and are protected against unlawful deductions from wages.
- **Holidays:** Employees are entitled to paid annual leave which must comply with the minimum entitlements set out in the Working Time Regulations 1998 (currently 5.6 weeks per annum for full time employees).
- **Family friendly:** Employees are entitled to various rights from a family friendly perspective which can include maternity leave and pay, paternity leave and pay, adoption leave and pay, the right to request flexible working, unpaid time

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- off to attend antenatal appointments and unpaid time off for dependents.
- **Statutory redundancy payment:** In the event that an employee with a qualifying period of employment is selected for redundancy, they would be entitled to a statutory redundancy payment, calculated on the basis of their age and length of service.
- **Discrimination:** Under the Equality Act 2010, an employee must not be discriminated against on the grounds of the protected characteristics prescribed by the legislation (for example age or sex).
- **Pensions:** Qualifying employees are entitled to be automatically enrolled into a pension scheme after their employer's staging date.

Employees and workers

It is important to understand what differentiates an employee from a worker. Although both parties share similarities, such as:

- Both work under a contract;
- Paid annual leave;
- Protection from unlawful deduction of wages; and
- Protection from discrimination,

workers are not entitled to many of the key benefits of employee status, including:

- Statutory notice periods to terminate employment;
- Family friends rights; and
- Protection from unfair dismissal.

Volunteers

Whilst there is no single statutory definition of a volunteer, one helpful explanation provided by the Police Act 1997 (Criminal Records) Regulations 2002 is that a volunteer generally is engaged in an activity which involves spending time, unpaid (except for travel and other out of pocket expenses), doing something which aims to benefit some third party.

Volunteers can be very advantageous for not-for-profit organisations. As well as being a practical choice financially, when budgets are tight, volunteers often give up their time because they personally believe in an organisation and its values, meaning that they are willing to promote the organisation because they want to, rather than simply seeing it as their job.

However, the legal status of volunteers is not clear-cut as there is a vast range of different types of relationships from the purely voluntary to those that are clearly contractual and those in between, which are difficult to define. This ambiguity makes it difficult for organisations



taking on volunteers to appreciate any legal obligations that they may owe them.

Organisations should consider the following practical tips to reduce the risk of a legally binding contract:

- Avoid making payments to volunteers that could be construed as wages. Payments to cover actual expenses should be clearly identified as such and ideally reimbursed against receipts.
- Remove or, at least, minimise perks that could be seen as consideration for “work”.
- Avoid creating “mutuality of obligation” and in particular enforcing any binding commitment on the part of the volunteer. Allowing volunteers to choose whether or

not to accept tasks will move away from the existence of a binding contract.

- Avoid using language that makes the arrangement sound contractual and adopt a flexible language such as ‘usual’ and ‘suggested’.
- Treat volunteers fairly. Having clear procedures for dealing with problems and grievances should reduce the likelihood of disputes with volunteers.

What can a volunteer expect from an organisation?

- Health and safety: Organisations owe common law and statutory duties to protect the health and safety of members of the public. It is recommended that organisations include volunteers in their health and safety policy as a matter of good practice and protect themselves and their volunteers against certain risks by taking out appropriate insurance.
- Data protection: Organisations owe the same data protection obligations under the Data Protection Act 1998 to volunteers as they have towards employees.
- Expenses: An organisation is able to pay for a volunteer’s expenses, however they should, where possible, be supported by receipts. Organisations should regularly assess whether their expense payments could actually be construed as wages.
- Volunteer agreement: Volunteer agreements should be considered to confirm an organisation’s commitment to its volunteers and what it hopes for from them. They are generally short and non-legalistic in style and typically include: the volunteer’s role, induction, training and supervision. It is

advisable to confirm in the agreement that there is no intent to create a legally binding contract, an employment relationship and / or worker status for the volunteer.

Things to consider when deciding whether to recruit an employee or volunteer

There are a number of things that differentiate volunteers from employees and therefore it is important for not-for-profit organisations to fully understand the differences, as well as ensuring that they have the correct resources before choosing between the two, or even utilising both.

Ultimately, an organisation will owe more duties to an employee than a volunteer, but with an employee the organisation will have a contractual arrangement for the guaranteed performance of certain duties.

Even after a voluntary or employment relationship is established, it is extremely important for the organisation to keep the situation under review to ensure that the arrangement doesn’t inadvertently evolve into a different status.

Commercial entities who engage interns should also carefully assess their arrangements to ensure they don’t fall foul of potential employment law regulations.

Case law in this area is developing at a fast pace, so make sure you take sound advice!

About the author

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