

Avoiding creating employment contracts

Summary

In some circumstances, organisations and groups may inadvertently grant employment rights to volunteers. This Information Sheet explains how to avoid this.

Please note that this document should not be taken as a substitute for legal guidance. Professional legal advice should always be sought where required.

This Information Sheet covers:

- How a contract could be established with a volunteer
- Suggestions for reducing the risks of creating a contract

NCVO MEMBERS ONLY

There have been a small number of cases in which a volunteer has attempted to prove, via an [employment tribunal](#)¹, that they were in fact working under contract in order to access protection under employment law.

Where a volunteer is deemed to be actually either an 'employee' or a 'worker', they can be entitled to

- the National Minimum Wage;
- protection under anti-discrimination and health & safety legislation;
- paid holiday; and
- statutory sick pay.

The likelihood of an organisation being investigated or taken to an employment tribunal is very small, but it does exist. Previous cases have been triggered by racial or disability discrimination claims, but it is also possible that a volunteer could seek redress if they feel unfairly treated or dismissed after a dispute.

Below we set out some fairly simple steps that groups and organisations can take to ensure that their volunteers are considered to be volunteers, and not employees, in the eyes of the law.

1

http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Employmenttribunals/DG_10028122

'Volunteer' or working under a contract?

To prove that they were employed by an organisation rather than volunteering for it, a person would have to show that they had a contract. Although this may seem fairly straightforward, what many people don't realise is that a contract can be created without a written document or even a verbal agreement.

What is a 'contract'?

In terms of employment a contract can arise when a payment is made in return for work, and there is an intention to create a legally binding relationship.

Payment

The payment - known legally as a 'consideration' - does not have to be of much financial value. Perks or benefits that could be seen to have value may be regarded as consideration. This could include training that is not necessary to carry out the volunteer's role.

This doesn't mean that volunteers can't receive expenses or training that is relevant to their role. But it does mean that when these things are given to volunteers, it should be clear that no payment for their work or time is intended.

Neither does it mean that volunteers can never be rewarded. The rule of thumb is that a volunteer should not be rewarded with anything that either represents a cost to the organisation or that the volunteer could use to make a profit.

For example, a discount on purchases for a charity shop volunteer will usually neither cost the organisation anything nor enable the volunteer to make a profit. However, in some cases charity shops buy goods to sell on at a profit. If a volunteer is allowed a discount that is so great that they end up paying less than the shop paid for it, this is clearly a cost to the organisation and could be seen as earnings.

Many groups and organisations reward their volunteers by holding events such as awards evenings, parties or dinners. This is totally acceptable, including inviting volunteers and employees to the same event.

What can blur the boundary is presenting volunteers with vouchers or tickets to events that the organisation had to buy or that could be sold on by the volunteer. Such a reward clearly has an economic value and, again, could be seen as earnings.

It's also okay for an organisation to reward their volunteers with gifts when they leave or after many years of service, but these should be small, such as flowers or chocolates. They should also be 'one-offs' to avoid creating an expectation that volunteers will be rewarded.

Intention to create a legally binding relationship

The intention to create a legally binding contract may not be something that either party has expressed or even considered. It could simply be implied by the circumstances.

One way of thinking about intent is to imagine the relationship from the point of view of an outside observer. If it looks and feels like a binding agreement has been made, then intent is likely to be inferred.

Groups and organisations should be careful that written documents don't ask volunteers to make fixed commitments or abide by procedures which would usually be associated with a paid employee, such as using a holiday booking form or a sickness/absence form.

NCVO MEMBERS ONLY

Reducing the risk of establishing a contract

Don't ask volunteers to sign an agreement

Volunteering England recommends that groups and organisations don't ask volunteers to sign an agreement to avoid the perception that a legally binding relationship is being created.

This doesn't mean that an organisation can't lay out the general elements of the role, what it hopes for from the volunteer and what the volunteer can expect. Such agreements act as a reference point for the volunteers, and a reminder to the organisation that it should meet the standards of good practice that it has set itself.

Don't create obligations

A central feature of an employment contract is an agreement to work a set number of hours at a set time and for a set period, eg 35 hours a week, between 9am and 5pm for a year. Whilst many groups and organisations need volunteers at a particular time, it is also important to avoid any suggestion that the volunteer is under an obligation to carry out the role.

Groups and organisations should rather talk about hopes and expectations, with the understanding that volunteers are free to come and go as they wish, and that there are no obligations placed upon them. One idea is to suggest that if the volunteers stay in the role for at least a specified time then both they and the organisation will benefit most from the experience.

Reimburse only actual out-of-pocket expenses

Reimbursing actual out-of-pocket expenses is not a payment because you are simply refunding the volunteer for something that they have already spent.

The process of reimbursing expenses should be based on a single, simple principle: only reimburse actual out-of-pocket expenses. This means volunteers submitting receipts that show what they have had to spend as a volunteer that they otherwise wouldn't have and the organisation reimbursing the

The organisation should keep receipts and records so that it can prove that that is hasn't been making payments. For guidance on how to do this, see Volunteering England's Information Sheet *Volunteer Expenses*.

It's also okay to provide expenses in advance, as long as receipts are provided once the money has been spent and any remainder is returned.

Only provide training that is relevant to the role

To avoid it being deemed a consideration, training should

- be relevant to the volunteer's role; and
- open to *all* volunteers carrying out that particular role.

As long as these guidelines are followed it should not matter whether the training is in-house or external or if it leads to a qualification.

NCVO MEMBERS ONLY

Further information

Volunteers and the Law, 2005.

A free publication by Volunteering England offering a readable guide to the law.

<http://volunteering.org.uk/law>

Volunteering England Information Sheets

Saying 'Thank You' to Volunteers

Volunteer Expenses

Problem Solving

<http://www.volunteering.org.uk/information>

Volunteering England Good Practice Bank

Includes a Theme on "Legal issues and volunteering"

<http://www.volunteering.org.uk/goodpractice>

What's a contract? - AdviceNow website guide

This independent website provides information on rights and legal issues.

<http://www.advicenow.org.uk/contracts>

NCVO MEMBERS ONLY

Last reviewed: March 2011

Disclaimer

We make every effort to ensure that our Information Sheets are correct at the time of publication. They are intended as a brief summary of relevant issues to help you plan or develop your work with volunteers. Legal advice should be sought where appropriate. Volunteering England is unable to accept liability for any loss or damage or inconvenience arising as a consequence of the use of this information.

The inclusion of other organisations in the Information Sheets does not imply any endorsement of independent bodies; all sources of further information are listed solely for signposting purposes.

Copyright

Please note that this Information Sheet is subject to copyright, which is owned by Volunteering England. Further information on Volunteering England's copyright can be found at: <http://www.volunteering.org.uk/aboutsite.htm>

For more information on managing volunteers, please visit The Good Practice Bank at www.volunteering.org.uk/goodpractice

A full list of Volunteering England's Information Sheets is available at: www.volunteering.org.uk/information sheets