



Volunteers & The Law

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Volunteers don't have any rights, do they?

- Volunteers are not covered by the same rights of that of an employee or worker. This means in theory that volunteers can be discriminated against or unfairly dismissed without impunity.
- It is true that volunteers do not have many “rights”, it is of course important to avoid practices that could be seen as unfair or discriminatory. No organisation would be able to retain their volunteers if they felt they were being poorly treated.

Definition of Voluntary Work

“Voluntary work” means work for an organisation the activities of which are carried on otherwise than for profit, or work other than for a member of a claimant’s family, where no payment is received by the claimant or the only payment due to be made to him by virtue of being so engaged is a payment in respect of any expenses reasonably incurred by him in the course of being so engaged.

Main Legal Issues

- A contract of employment can exist without a written document – for a contract to exist needs to be a ‘consideration’ and ‘intention’
- Case law has provided examples where an organisation has been deemed to be an employment relationship
- However volunteers need to be managed well

Differences between Volunteering & Employment

Employee Roles exists if any of following conditions are met:

- Consideration
 - Intention
 - Agreement
-
- An employee has protection from unlawful discrimination i.e. age, race, sex, religion, politics or disability

Armitage v Relate

- Armitage was training to be a Relate Counsellor. She received only proper reimbursement, so money not an issue. She received training to enable her to do the work, in return had to make a commitment of 600 hours of counselling. If didn't had to repay all or some of cost of value of training.
- She claimed race discrimination and the tribunal had to decide whether she was working under a contract.

Armitage v Relate 1994

Tribunal decision was that a contract of employment existed. The decision was based on the following:

The requirement to repay the cost of training

The obligation to work a minimum of 600 hours

The fact that training led to an opportunity for paid work with Relate

Chaudri v Migrant Services

Chaudi worked 12 hours a week as a 'volunteer' and received £25 per week (subsequently increased to £40) 'to cover expenses'.

She became pregnant and was dismissed.

She claimed sex discrimination and unfair dismissal due to sex.

Tribunal had to decide if she was working under a contract of employment (in order to claim unfair dismissal).

Chaudri v Migrant Advisory Service (MAS) 1997

Tribunal decision was that a contract of employment existed. The decision was based on the following:

The 'expenses' payments are a clear case of consideration. Regularly paying these amounts, including when Mrs Chaudri was absent, meant that they became wages.

Gradwell v Blackpool

All volunteers sign a written volunteer agreement and are expected to attend monthly meetings and induction training. There is no minimum time commitment by volunteers and the CVS reimbursed actual out of pocket expenses only

Gradwell v CVS Blackpool, Wyre and Fylde 1997

The tribunal decided that these volunteers were not employees despite the fact that they had written volunteer agreements.

The tribunal decided that there was no consideration (as neither the payment of actual expenses or the provision of training to enable the volunteer to carry out their role is viewed as consideration) and there was no intention present.

Murray v Newham CAB

The organisation had a volunteer agreement in place which would commit the volunteer for a minimum period of volunteering; had to complete their basic training with 8 months and notify the bureau manager of absence or intention to leave.

The organization agreed to provide training, support and the reimbursement of expenses.

There were also grievance and disciplinary procedures and a number of commitments and requirements expected of volunteers such as processes for booking holiday.

Murray V Newham Citizen's Advice Bureau 2004

Tribunal decision was that a contract of employment existed. The reason for this is

an agreement in which the volunteer committed to:-

- volunteer at particular times for a minimum time period
- complete basic training within 8 months
- notify the bureau manager of absence or intention to leave
- process for claiming holidays

Practical ways to reduce the risk

- Reduce formality of documents you use
- Avoid using language that is indicative of a contract
 - volunteer agreement NOT contract
 - Volunteer role description NOT job description
 - Reimbursement NOT payment
 - Arrangements, if there are problems NOT disciplinary procedures
 - Arrangements if you have a complaint NOT grievance procedure

Volunteer Agreement

- Talk about 'expectations' and 'intentions'
- Don't use 'requirement' and 'obligations'
- e.g as you indicated you will be available ofr 6 hours per week, on a Monday and Wednesday
- NOT you will be required to work 6 hours per week on Monday and Wednesday
- Agreement does not need to be signed as in honour only not intended to be binding



**KEEP
CALM**

AND

**MANAGE
VOLUNTEERS**

DBS checks

Now only for regulated activities

Adults:

- Healthcare
- Personal Care
- Social Work
- Assistance with household affairs
- Assistance with conduct of person's own affairs
- Conveying an adult to & from places

Regulated Activities

Children

- Working in a limited range of establishments
- Unsupervised teaching, instruction, care
- Advice or guidance
- Moderating a public electronic communication service
- Driving a vehicle

and

- Healthcare
- Personal care
- Registered childminding
- Foster carers

3 levels of checks

- Standard (£26)
- This checks for spent and unspent convictions, cautions, reprimands and final warnings.
- Enhanced (£44)
- This includes the same as the standard check plus any additional information held by local police that's reasonably considered relevant to the role being applied for.
- Enhanced with list checks (£44)
- This is like the enhanced check, but includes a check of the DBS barred lists.
- An employer can only ask for a barred list check for specific roles.

Rehabilitation of Offenders Act 1974

- Under the Rehabilitation of Offenders Act most convictions become spent (old) after a period of time. The more serious the crime, the longer the rehabilitation period. Ex-offenders normally have the right not to reveal spent (old) convictions, and in many situations, potential employers or volunteer managers do not have the right to ask.
- However, the Rehabilitation of Offenders Act also says that where work involves contact with 'vulnerable' people, organisations can require applicants to declare spent convictions as well as current ones. Such types of work are defined in the 'Exceptions Order' to the Rehabilitation of Offenders Act. This means that organisations should only ask volunteers to reveal spent convictions if they are recruiting for a position which falls into the Exceptions order.

Good Practice Measures

- Taking up references
- It is sensible and practical for equal opportunities reasons if taking a reference verbally to make a checklist of questions to ask and keep a written record of points raised during the conversation.
- Thorough Training & Induction
- Adequate Supervision of volunteers
- Clear Child protection/vulnerable adult protection policies and procedures
- Complaints procedure
- Seeking feedback from clients/service users

Health & Safety

- Duty of Care
- Health & Safety Legislation Basic Principles
- Health & Safety Policy
- Risk Assessment



Insurance

- Employer Liability Insurance
- Public Liability Insurance
- Professional Indemnity Insurance
- Volunteer Drivers



Restrictions

- Employment of members of the governing body
- Payment of expenses to members of the governing body
- Relationship between employees and members of the governing body
- Young people & children
- Volunteers from overseas
- Involving paid staff as volunteers

Policies for volunteers

Policies act as a framework, and good policies should act as guidance rather than all encompassing blueprints. Policies and procedures should be there to maximise participation, not stifle it.

Paperwork

- Task description
- Application form
- Volunteer record file
- Expenses form
- Induction checklist
- Volunteer policy
- Volunteer agreement
- Volunteer handbook
- Disciplinary/grievance procedure
- Exit interview



Expenses



Volunteering & Welfare Benefits

- Volunteers on Job Seekers Allowance
- Volunteers on Income Support
- Volunteers on Incapacity Benefit
- Disability Living Allowance



Jobseekers Allowance

People on JSA can do as much voluntary work as they want as long as they continue to actively seek work. This means as an organisation you will have to give your volunteers some flexibility, as they will need to visit the Job Centre for meetings and to sign on, and will need to go for interviews when they come up.

Income Support

Volunteering should not affect someone's Income Support as long as they are not receiving any money other than reimbursement of expenses.

Incapacity Benefit

There is a lot of confusion over Incapacity Benefit because there use to be a rule that individuals in receipt of the benefit could only volunteer for 16 hours a week. This rule no longer applies. If you are in receipt of the benefit you can volunteer for as long as you want.

Disability Living Allowance

DLA is an allowance paid in acknowledgement of the fact that life for someone with a disability maybe more expensive-for instance, someone with mobility problems may be reliant on taxis. Volunteering will not affect whether an individual receives this benefit or not.

Reducing the Risk



Disclaimer

This presentation is correct to the best of our knowledge. However MyTrainingResources does not take any responsibility or accept any liability from actions arising from this training. If you are in doubt about any issue involving volunteers and the law you should take professional legal advice.

A graphic illustration featuring a large number of stylized hands in various colors (blue, green, orange, brown, purple, teal) reaching out from the edges of the frame towards the center. The hands are arranged in a circular pattern, creating a sense of unity and community. The background is white, and the hands are set against a light gray circular backdrop.

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