

Good Practice in Volunteer Agreements

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- The information provided is understood to be correct and is presented as an overview
- The presentation and any accompanying notes are made available on the basis that no liability is accepted for any errors of fact or opinion they may contain
- Professional advice should be obtained before applying the information in particular circumstances

Definition of Volunteering

“the commitment of time and energy for the benefit of society and the community, the environment or individuals outside (or in addition to) one’s immediate family. It is unpaid and undertaken freely and by choice.”

NI Dept for Social Development

Legal status of volunteers

- ▶ Definition and legal aspects far from clear
- ▶ Lack of statutory definition means we depend on case law
- ▶ Generally, no obligation to carry out work

Volunteers and the Law

“Volunteers come in many shapes and sizes and it cannot be assumed that all will have the same status in law”

Lord Justice Elias

X v Mid Sussex Citizens Advice
Bureau

Court of Appeal 2011

Legal Concepts

- Consideration

- The individual and the organisation exchange something of material value. The value of what is exchanged can be minimal.

- Intention

- The individual and the organisation intend to enter into a legally binding contract i.e. they can each go to court to enforce their rights. Intention is usually implied by looking objectively at all the circumstances.

- Obligation

- The employer has an obligation to provide work and the employee has an obligation to do the work.

- Employment Rights

- An employee has protection from unlawful discrimination across equality grounds, i.e. age, race, sex, religion, politics or disability. Employees also have protection against unfair dismissal and unfair redundancy. Employees have rights to sick pay, maternity leave, trade union activity, holidays and the national minimum wage.

Who is an employee?

- ▶ Individual who has entered into or works under a contract of employment
- ▶ Can be verbal or written, can be implied or explicit
- ▶ Is there:
 - Consideration
 - Mutuality of obligation
 - Personal service
 - Sufficient control

Volunteer agreements

Don't

- ▶ Do not set out rights and obligations as in a contract of employment
- ▶ Use language which implies employment – contract, job description, employer, employee, pay etc
- ▶ Apply employment policies such as recruitment, discipline, grievance, absence

Do's

- ▶ Prepare a volunteer agreement using appropriate language – intention, hope, expectations
- ▶ State that this does not create a legally binding relationship
- ▶ Involve in compliance policies – safeguarding etc
- ▶ Consider separate policies – problem solving

Reimbursement

Don't

- ▶ Make payments which could be regarded as wages, e.g: unrelated to expenses incurred

- ▶ Offer 'perks' with a tangible value which could be viewed as 'consideration'

Do

- ▶ Offer to reimburse actual out of pocket expenses supported by receipts where applicable

Training

Don't

- ▶ Offer training which is unrelated to the work

Do's

- ▶ Provide appropriate training necessary for the voluntary work
- ▶ Provide protective clothing to be worn whilst volunteering
- ▶ Provide subsidised childcare when performing role
- ▶ Give small tokens of appreciation

Tips

- Reimburse volunteers for genuine expenses only. Obtain receipts and keep records of the expenses paid. Payments that do not relate to actual expenses may be viewed as wages by a Tribunal (and the Jobcentre or HMRC, which will have separate implications for tax and the volunteer's benefits).
- Do not provide training beyond what is required for the volunteering role as this may amount to a payment they receive in return for their work and lead to a contract of employment. Training that leads to qualifications that would otherwise be expensive to obtain may well be viewed as a benefit.
- Arrangements should be documented in a written agreement with the volunteer
- Written volunteer agreements should refer to 'reasonable expectations', not binding requirements. If volunteers need to commit for a certain period, this should be phrased carefully. It is advisable to express this as a hope that volunteers will stay a certain period or suggest that they will benefit more from the experience if they volunteer a certain number of times.
- State clearly this is not intended to be a legally binding contract.
- Sanctions for non-compliance should not be imposed on volunteers. In particular, volunteers should not be subjected to disciplinary procedures.
- It is advisable to expressly state that volunteers cannot be required to work at any time and that there is no obligation to provide the volunteers with work on an ongoing basis. Do not use employee related terminology, such as 'dismissal' and 'sick leave'.

More Information on Volunteer Agreements

- [http://www.diffen.com/difference/Agreement vs Contract](http://www.diffen.com/difference/Agreement_vs_Contract)
- <https://knowhownonprofit.org/people/volunteers/keeping/volunteer-agreements>