

Volunteers, Workers and Employees- The Key Differences

Introduction:

The challenges which were faced and continue to be faced by the voluntary sector as a result of covid-19 are huge. Job losses have been inevitable for many, with organisations having to downsize and become more efficient in order to thrive.

Despite all of these pressures, it is important that volunteers are not viewed as a 'free resource' or a shortcut to get work done. Volunteering requires planning and investment.

Volunteering is defined as "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." ***Join in, Get Involved: Build a Better Future Volunteering Strategy for NI, 2012.***

If organisations do view volunteers as a 'quick fix', as a result of lower paid staff numbers, this can result in a number of problems, including a reduction in volunteer satisfaction and motivation, and even legal or safeguarding issues, such as modern slavery.

Workers, Employees or Volunteers (in the eyes of the law)

1. Worker

You are classed as a worker if:

- You have a contract/verbal agreement to do work for a reward, e.g. money or benefit in kind, such as free merchandise, free accommodation and/or meals.
- You have to turn up to work when you don't feel like it
- You have responsibilities as part of your contract

As a worker, you are entitled to certain employment rights:

- The National Minimum Wage
- Statutory holidays and rest breaks
- Protection against discrimination

Please note: Internships will generally fall under this bracket. Although the person is 'volunteering' their time, there is likely to be an expectation for skills/personal development, or free accommodation for example.

2. Employee

You are classed as an employee if:

- You are required to work a regular and minimum number of hours
- Expectation to be paid
- You get tax and National Insurance deducted from pay
- You cannot send someone on your behalf to do the work

Employees have the same rights as workers, and more:

- Statutory sick pay and maternity/paternity leave
- Minimum period of notice

3. Volunteer

You are a volunteer if you meet the following criteria:

- Unpaid- this doesn't mean volunteering is a free resource, but it requires investment.
- You may be reimbursed reasonable expenses. This will often be outlined in a policy and usually you will receive expenses on the provision of receipts.
- You have not signed an employment contract
- Freely and by choice, i.e. no signed contract or compulsory commitment.
- The time and work you do is for the benefit of the environment and/or other people.

Job Substitution

What is job substitution?

- Job substitution is a difficult and complex area. The term 'job substitution' suggests that it is one volunteer taking on the whole role of a paid staff member and implies that the only difference between paid staff and volunteers is a salary or financial reimbursement. This is generally not the case and therefore it is better to consider alternative terms

Displacement is when paid roles are purposefully removed with the intention that volunteers can be brought in to do the work instead.

Replacement is when work previously done by paid roles is reallocated to volunteers. For example, an organisation is forced to cut paid roles because of funding changes, so it recruits volunteers to deliver the service in a different way for the continued benefit of its clients.

If paid roles are being purposefully displaced so volunteers can do the work instead, concerns should be raised.

Employment or Volunteering

An employee role is in place as opposed to a volunteer role if any of the conditions below are being met (resulting in an unintended contract). As a result, these individuals may be protected by employment law!

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.. 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.

How to avoid complications:

This document is written to ensure that there is clarity and pre-planning before commencing a volunteer programme to provide support for volunteer involving organisations.

1. Reduce formality
2. Review the language you use

'Volunteer agreement' not 'contract' (see our publication [Developing a Volunteer Agreement](#))

'Volunteer role description', not 'job description'

'Reimbursement' not 'payment'

'Arrangements if there are problems' not 'disciplinary procedures'
'Expectations' not 'obligations'

3. Reimburse actual expenses only- for more information, have a look at our [Volunteering and Expenses Information Sheet](#)

Please note: We have a series of relevant case law examples in our [Volunteers and the Law Information sheet](#), which would be useful to look at to enhance your understanding.

WORKER	EMPLOYEE	VOLUNTEER
• Contract or Verbal Agreement in return for a reward • You must turn up for work • You have responsibilities due to your contract • Protected by Employment Law	• Must work regular and minium hours • Expectation to be paid • Tax and National Insurance deducted • Cannot send someone on your behalf to to the job • Protected by Employment Law	• Unpaid • Free Will • No contract • No committment • Reasonable expenses reimbursed • Role is for the benefit of the community or others • Not protected by Employment Law