

National Minimum Wage and Expenses

The National Minimum Wage Act 1998 came into force in April 1999. The act gives all employees the right to a set minimum wage. In theory, this should not affect volunteers. However, there have been a couple of cases in which individuals volunteering have been able to prove that they have a contract of employment and are entitled to full employment rights, including the national minimum wage. The legislation behind the National Minimum Wage act can look complex, and the safeguards that organisations need to impose may seem pernicky, but there are some fairly simple steps that organisations can make to ensure that their volunteers *are* volunteers, and not employees, in the eyes of the law.

Employee or volunteer?

To prove that they are employed by an organisation rather than volunteering for it, individuals would have to show that they had a contract. This may seem fairly straightforward. Volunteers often sign agreements stating that they understand what the organisation expects of them and will do their best to turn up on time and follow policies and procedures etc. etc. However, it is usually made clear to the volunteer that this is a statement of what will happen ideally and that it is not legally binding, which means that it is not a contract. Therefore most organisations working with volunteers would assume that their volunteers have not got a contract with them.

What many people do not know is that a contract does not have to be a written document or even a verbal agreement. A contract of employment is created when an individual agrees to carry out a task in return for something. So, for instance, if you agree to water your neighbour's garden while they are on holiday in return for £10, a contract of employment has been set up. If your neighbour does not agree to pay you but says that if you water their garden then they will bring you back some duty-free cigarettes, a contract is still created because you are doing something in return for something with an economic value (legally referred to as a 'consideration').

If you apply this rule to volunteers, then a contract of employment is created if the volunteer receives anything of economic value in return

for volunteering, whether this is money, gift vouchers, training unrelated to their role, or boxes of chocolates. If the volunteer expects to receive the 'consideration' in return for their work, then a contract of employment is set up. This does not mean that volunteers cannot receive expenses and training, just that the way in which these are given out has to make it clear that they are not a payment.

Paying expenses

Reimbursement of actual out-of-pocket expenses is not a payment because you are reimbursing the volunteer for something that they have already spent. An expense is any cost that a volunteer has to pay out that they would not have incurred if they had not been volunteering for you. This could be money spent on travel, food brought while volunteering, care costs or special equipment. To show that any money you pay out as expenses is a reimbursement and not a payment, it is important that you ask for a receipt and reimburse the exact amount that the volunteer has paid. It is a good idea to keep receipts and records of money paid out in case there are any queries, so that you can prove that you have not been making payments.

It may be tempting to cut down on administration and just pay volunteers a set amount each day, but if they have not spent this amount then you are making a payment and creating a contract of employment. Organisations who make flat-rate expense payments are putting themselves at risk. In a recent case the Inland Revenue ruled that an organisation paying its volunteers a flat rate of £6 a day had in fact created a contract and the organisation was ordered to pay the National Minimum Wage.

Many organisations will worry that moving from a system of flat-rate payments to a system where the volunteer has to provide receipts, and will only receive a reimbursement of what they have actually spent, will result in them losing volunteers. But this shouldn't happen as long as the changes are explained and volunteers understand why they are important. It may well be worth calling a volunteer meeting or producing a factsheet to explain why you cannot make flat-rate payments any more. If volunteers understand why the changes have

to be made, and that it is not something the organisation is imposing on a whim, they may be less upset at losing flat-rate payments.

It is also important to note that even before the National Minimum Wage Act came in, paying flat-rate reimbursements to volunteers meant that volunteers on benefits were at risk of losing or having their benefits docked. It has always been best practice to pay an actual, receipted reimbursement, in order to safeguard volunteers' interests, but these recent cases have highlighted that now the organisation is at risk as well as individual volunteers.

Training

Training can also be counted as a 'consideration', but only if you are giving a volunteer training that is in no way relevant to their role in return for work that they have done for you. For instance, if you pay for all volunteer gardeners who have been with your organisation longer than a month to go on a computer training course, even though your organisation does not own a computer, you are in effect making a payment in return for work done and creating a contract of employment.

Any training that the volunteer needs in order to do their role is fine, because it is seen as necessary training and would not count as a consideration. It does not matter whether the training is in-house or external or whether it leads to a qualification. Training is only regarded as a consideration if it is not relevant to the volunteer's work. Organisations should be aware that because training has to be 'necessary', any training offered should be open to *all* volunteers carrying out that particular role. If it were only open to people who had been with the organisation a set amount of time, then it would suggest that the training was not strictly necessary and would create a contractual obligation.

Rewards and Honoraria

Rewards and presents for volunteers can also be problematic if it can be shown that there was an expectation that the volunteer would receive something after working for you. Sadly, it is probably best to avoid giving anything with an economic value unless it truly is a one-off. It is only acceptable to pay an honorarium if it is totally unexpected and there is no precedent surrounding it. If it can be proved that there was an expectation that the payment would be made in return for a certain piece of work, length of service, or on leaving the organisation, then the payment would not be an honorarium but a payment. It would therefore be taxable and would give the volunteer employee status.

It is best to be extremely wary about paying honoraria. As well as the possibility of creating a contract, it may cause other problems. Benefits Offices generally see honoraria as a payment and may well dock the money off an individual's benefits. Honoraria can also create bad feeling among those volunteers who do not receive them and can thus be divisive.

Instead of paying out honoraria or giving volunteers individual gifts, organisations could make sure that all volunteers are able to claim expenses for meals, travel and care costs and that spare money is invested in making volunteer roles more rewarding - for example, by offering more training, social activities, extra resources, tools to make the organisation more accessible, etc. It is also fine to arrange social events and group outings to say thank you to volunteers.

If you have any queries about National Minimum Wage or any feedback on how your organisation has coped with the changes that have needed to be made in its wake – please contact the Information Service on freephone/textphone 0800 028 3304 (Monday-Friday, 10.30-12.30, 2-4) or e-mail information@volunteeringengland.org