

The legal status of volunteers

There is currently no legislation specifically covering volunteer workers. Neither is there any legal definition of what a voluntary worker is. Organisations have to be careful that the volunteers don't become employees in the eyes of the law.

Differentiate between volunteers and employees

Clearly, volunteers make an important contribution. They often provide a flexible, motivated work force far beyond the financial resources of the organisation.

But while it is natural for organisations to wish to treat valuable volunteers on equal terms to paid staff, this cannot apply to written agreements.

When the distinction between volunteer and employee becomes blurred, organisations can find themselves with legal problems.

In a number of recent claims, voluntary workers won the right to be considered as employees and brought a claim against their employers for both [discrimination](#) and [unfair dismissal](#).

Put intentions in writing

Some organisations avoid written documents totally for fear that they may inadvertently create legal obligations toward their volunteers. However, recent rulings have shown that tribunals tend to rule on behaviour rather than language. A pattern of behaviour can represent a contract, even if there's no written document.

It remains good practice to put intentions into writing when it comes to volunteers:

- Volunteer role descriptions and agreements can help both parties to clarify intentions and expectations, lowering the chance of a grievance arising in the first place.
- On a practical level, a written agreement can help the organisation ensure that practice does not breach the law or drift into dangerous territory.

but don't create volunteer 'contracts'

While organisations will wish to have detailed, formal [contracts](#) for paid staff, it is actually safer to avoid them when it comes to volunteers. They can lead to false expectations of obligation on both sides.

For this reason, care must be taken to avoid setting out the volunteer relationship in terms of rights and obligations. Instead, express goals as intentions, hopes, or policies. This reflects the voluntary nature of the arrangement.

This means you cannot offer training with the provision that the volunteer must work a minimum amount of hours for the organisation. Nor can you promise to provide recompense such as training or a job offer for the volunteer in return for his or her time.

Checklist

- **Steer clear of words with a contractual connotation.** Instead of words like 'contract', 'pay', 'employee', and 'employer', use words such as 'volunteer', 'intention' and 'relationship'.
- **Safeguard against misinterpretation** by including the following sentence: 'This agreement reflects the hopes and intentions of the volunteer and the charity, and is not contractually binding in any way on either party.'
- **Differentiate between paid staff and volunteers.** This does not mean volunteers are treated less fairly than employees.. Organisations may wish to have an equal opportunities policy for volunteers, but this should be a separate document from any [equal opportunities policy for staff](#).
- **Remember you cannot 'require' anything of your volunteers.** They cannot be bound by contractual obligations without being considered employees by employment tribunals. For example, if you think it would be best that volunteers remain with you for a certain period of time, you should phrase it such that it is not a demand, but only a hope 'that the volunteer have a long, pleasant stay' with your organisation. Such statements should be reflected in your working practice. Flexibility should be shown toward volunteers who fail to fulfil their expectations.

Expenses and benefits in kind to volunteers

It is good practice to reimburse volunteers for expenses they incur while working for your organisation. However, organisations need to exercise caution when it comes to refunds. Paying "expenses" automatically, without justification, can be seen in tribunals as the equivalent of paying a salary.

[Charity Commission Briefing CC21](#) states "Paying includes not only payment in money, but also benefits in kind, such as free (or subsidised) accommodation or the provision of a car".

The safest course is to reimburse only actual expenses, preferably against receipts. Always offer to pay your volunteers' expenses. Create a specific procedure for making reimbursement payments and make certain that everyone knows what it is.

The following are examples of legitimate expenses:

- Travel to and from the place of volunteering
- Travel undertaken in the course of volunteering
- Meals taken during the course of volunteering (usually a single meal up to a certain value per day)
- Postage and telephone costs if working from home
- Protective clothing or other essential equipment
- Childcare expenses

For volunteer drivers, the [HM Revenue and Customs](#) sets tax-free mileage rates under the Fixed Profit Car Scheme. This allows organisations to pay drivers a mileage allowance without the need for detailed record-keeping. However, organisations will wish to set up some system of documentation with their volunteer drivers in order to regulate expenses properly.

Further information

- [Volunteering England](#) provide information about legal status of volunteers as well as major types of liability.
- [Directory of Social Change](#) have published the useful article *Legal Eyes: Volunteers and the law – an update*.