

Exploring the rights of volunteer workers



Sinéad O'Brien, Beauchamps Solicitors, examines the legal obligations that are owed by companies to volunteer workers, as compared to employees

A lot of charities and other voluntary organisations would not be able to function without volunteers working alongside their paid employees. The legal obligations owed to a volunteer as opposed to an employee differ, although there is no legislation governing volunteers and their rights. While the rights of volunteers are not as extensive as those of employees, charities do have certain responsibilities for volunteers.

The main distinction between employees and volunteers is that a volunteer does not get paid and the volunteer cannot be forced to perform the actual work. A person will be generally regarded as an employee where he supplies his labour, cannot subcontract the work,



receives a fixed wage and works a defined number of hours on a weekly basis.

An obligation on a volunteer to carry out a task during a certain period may be indicative of an employment relationship, particularly if the 'volunteer'

receives regular paid expenses. The payment of expenses may be viewed by the Revenue Commissioners as taxable emoluments from the charity and the volunteer could be deemed an employee on that basis.

This means that the charity, as an employer, will be required to register that person as an employee for tax purposes and pay them at least the national minimum wage.

Whether any particular arrangement is considered to be a

contract of employment or not is a question of fact and naming a particular relationship as one thing does not suffice, as the totality of the relationship needs to be considered.

Interestingly, in the UK, volunteer agreements are usually entered into which set out the organisation's volunteer policy and the nature of the relationship between the parties, which can help clarify any issues that arise.

Legal obligations

A raft of legislation applies to employees including health and safety, organisation of working time, minimum wage, employment equality, data protection, unfair dismissal and redundancy legislation.

The main legislation that applies to a volunteer relates to health and safety and data protection. A volunteer has the same rights under the Data Protection Acts 1988-2003 as an employee. This means that the charity organisation must comply with the rules on personal data that are held about the volunteer on a computer or in paper files.

Under the Safety, Health and Welfare at Work Act 2005, all employers must take steps "so far as it is reasonably practicable" to ensure the safety, health and welfare at work of all employees and other persons such as volunteers at an employer's workplace.

In order to claim any rights under other employment-related legislation, such as unfair dismissal legislation, a person has to be an employee.

Best practice

In order to adhere to best practice in this regard, volunteers should:

- Receive information about the organisation's purpose, work and values and its policy on volunteers and a clearly written description of the work s/he will undertake;
- Be trained/inducted into the organisation (for example, manual handling training to avoid personal injuries claims);
- Be consulted on matters which directly or indirectly affect them;
- Be covered by insurance for their actions;
- Be told how to deal with difficulties when volunteering, for example, bullying and harassment policies and so on;
- Carry out their work in a safe environment;
- Be reimbursed for actual agreed expenses;
- Be free from discrimination on grounds of gender, marital status, race, sexuality, religion and disability.

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