

There is no such thing as an intern

Very often charities will, understandably and appropriately, rely heavily on volunteers to help them in the work of the organisation. However, it is important that, for every individual engaged by an organisation, the correct employment status is attached to them. Your charity could get into legal problems if you don't clearly distinguish between paid staff and volunteers.

One area of particular confusion and difficulty is the area of internships. As the title to this article suggests, there is no legally recognised employment status of "intern" and so organisations offering internships need to be clear on which of the legally recognised statuses applies to the particular arrangement that is being put in place. If not, it's possible for people you may regard as volunteers to claim they have the same rights as employees, including claiming unfair dismissal for example, or the right to the National Minimum Wage (NMW).

Organisations must establish whether their interns are entitled to the NMW. Determining the employment status of your intern does not depend on what you call the relationship or their job title. All of the circumstances will have to be considered – not just the written documentation, but also the day to day practice. Attaching the correct employment status to individuals engaged in your organisation is vitally important, and failure to pay the NMW to someone who is entitled to it is against the law. Calling an unpaid worker 'unpaid' or 'a volunteer', even if the individual agrees to this, does not prevent them from qualifying for the NMW if they are entitled. It is your responsibility to decide whether the person is a worker for NMW purposes and, if they are, whether an exemption applies to them - this [Worker checklist](#) can help you decide.

A volunteer has no contractual relationship with the organisation. Volunteering is an activity that someone does freely, by choice, at their convenience, and is unpaid (except for reimbursement for out of pocket expenses incurred whilst volunteering). Volunteers should not have a contract of employment and a job description, but it is good to have a written volunteering arrangement and a role description at the outset to clarify expectations on both sides and ensure there is no confusion. An organisation cannot insist on a volunteer working certain times or undertaking certain duties. Any written statement of agreement between the parties should set out in general terms what the parties have agreed between them and should explicitly say that it is not intended to be legally binding, and should not be called a contract.

Volunteers can be provided with accommodation free of charge 'as is reasonable in the circumstances.' It is important to consider whether the need for accommodation is relevant to the role and reasonable, in order for it to not be considered a perk or payment.

A worker is a person with a contract to personally perform work or provide services to the organisation. Workers should usually be paid at least the NMW. There are certain exemptions to this, including workers living together in a community whose purpose is to practise or advance a religious belief. However, as with every area of law where an exemption from the normal position is relied upon, a careful check should be carried out to ensure that the exemption can in fact be applied to the facts of a particular case.

Some more NMW considerations

If your interns have set hours to do regular work for you and are personally required to undertake duties, then they are likely to be counted as an employee or worker. (A volunteer, for instance, does not have to turn up for work if they don't want to - even if you or their colleagues expect them to or they generally work to a regular pattern.)

If your intern receives any type of reward or payment other than expenses and subsistence reasonable in the circumstances of the work (including a promise of a contract for future work), they could be classed as an employee or worker. This then gives them some employment rights including, in most cases, the right to (at least) the NMW.

Any training the intern receives which is not directly related to the duties they undertake will most likely be seen as a 'benefit in kind', and will mean that they will be entitled to the NMW.

Some charitable organisations may seek to classify their interns as voluntary workers. This is a specific category provided for in NMW legislation and is of very limited scope. Specific advice should be sought before attempting to attach "voluntary worker" status to any individual engaged by your organisation.

Record keeping

If you wish to claim that payments to people engaged by you are for expenses, rather than wages, you should record details of payments made and what the payment related to. You should always be able to explain how you arrived at the level of any estimated expenses reimbursed.

Correctly identifying the employment status and entitlement to NMW of people you are engaging is of crucial importance and should be well thought through before a recruitment exercise is undertaken.

Mark Mason May 2016

For specific advice on this or for anything else to do with employment law or HR in your organisation, please do not hesitate to get in touch.

Mark Mason is an employment lawyer and network associate of Global Connections. Mark advises employers and employees on all aspects of employment law and human resources practice and represents Claimants and Respondents in Employment Tribunal proceedings. Mark is experienced in advising churches and mission agencies on employment law and HR in their particular context. Mark has agreed to write regular articles on some of the topics that he is most commonly asked to advise on by churches and mission agencies.

These articles are intended to provide general information and guidance and are not to be relied upon as legal advice. For specific advice on a particular situation, you can contact Mark on 028 9084 8899 or email him at mark@markmasonlaw.co.uk. Please note that Global Connections members can benefit from an initial 30 minute no-cost telephone consultation.

To receive Mark's monthly employment law articles, please email mark@markmasonlaw.co.uk and ask him to add you to his mailing list.