

Volunteers and National Minimum Wage

If your organisation relies on the contributions of volunteers for its operation, you need to be clear about the differences between volunteers, workers and voluntary workers to avoid being caught by National Minimum Wage obligations.



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Lucy McLynn explains the differences in status and how they can impact on your charity

Many faith-based organisations are highly dependent on the work contributions made by individuals who are not paid for what they do. Voluntary activity is often undertaken by those who see it as an act of witness or service inspired by their faith. Faith communities and the charities associated with them benefit accordingly.

It is extremely important, however, that organisations ensure they are steering a correct course in respect of their National Minimum Wage (NMW) obligations. However amicable relations are between individuals and the organisations they are working for, and how ever unlikely it may seem that they would challenge the situation, HMRC has standalone rights to enforce NMW. It has increasingly been targeting not-for-profit organisations and scrutinising their practices.

We set out below some common questions about NMW from faith-based organisations, and our answers.

What is the difference between National Minimum Wage and the 'Living Wage'?

The National Minimum Wage is the legal minimum that has to be paid to all workers from the age of 16 upwards. There are different rates at different ages and lower rates for apprentices. The rates are set in April of each year.

The 'Living Wage' can mean two different things:

- The National Living Wage is effectively the National Minimum Wage rate for workers aged 25 and over and must be paid (and this is included when we refer to NMW below).
- The UK Living Wage and the London Living Wage are (higher) rates set annually by the Living Wage Foundation. These are calculated on the actual cost of living in London and the rest of the UK. There is no requirement on an employer to pay these rates, but ethical employers often aim to do so where they can afford it, and they can then describe themselves as 'Living Wage Employers'.

We don't have to pay our volunteers NMW do we?

As long as volunteers are genuinely volunteering, with no obligation to do any work, then they will not be 'workers' and so will be outside the remit of NMW. There must be nothing in the arrangements with your volunteers that could give rise to a contract to do work – for example, any exchange of something of value in return for the volunteer's time and effort. In particular, there must be no pay whatsoever, and no benefits.

We can – and should – pay our volunteers their expenses though, shouldn't we?

Yes, and this will not create a contract for the volunteer to work, provided that all that you pay is either a reimbursement of actual out-of-pocket expenses or a reasonable estimate of expenses that have been or will be incurred. The estimate needs to be specific to any particular volunteer's circumstances. You should not be estimating £5 a day for travel for all volunteers, when they are likely to have different lengths and costs of journey, and some may have no travel costs at all if they walk.

What is the difference between a volunteer and a 'voluntary worker' and aren't voluntary workers exempt from the entitlement to NMW?

A voluntary worker is someone who is in a contractual relationship to carry out work, perhaps because of the level of commitment that they make or the regularity of their voluntary work. They have a recognised legal status in the way that a volunteer does not. Voluntary workers are expressly exempt from NMW, but it is a very narrow exemption under the legislation. It applies only where the voluntary worker is working for a charity, voluntary or statutory body, or fundraising organisation, and receives no payments other than expenses (as described above), or actual subsistence or accommodation.

Can we pay 'pocket money' to our voluntary workers so that they can have a means of subsistence? Some come from overseas specifically to volunteer or train with us, and they need something to live on.

Subsistence can only be provided to a voluntary

worker in kind, not by way of a payment – otherwise you will fall outside the NMW exemption. The only exception to this rule is where the voluntary worker is engaged by another charity that makes arrangements (as part of its charitable purposes) for the voluntary worker to carry out work for another charity – or similar organisation, as outlined above. In those circumstances a payment can be made for subsistence. So, for example, if a church arranged to send one of its voluntary workers to work with a community organisation, doing work consistent with the church’s charitable aims, subsistence could be paid – either by the church or by the community organisation.

Can payments be made to voluntary workers to cover their accommodation costs?

No: subsistence costs cannot include accommodation costs. A voluntary worker can only ever be provided with actual accommodation – which must be appropriate to the voluntary work. For example, it may well not be reasonable to provide full-time accommodation to a voluntary worker who only works for a few hours a week.

What if payments are being made to the voluntary worker not by our organisation but by a third party or third parties, such as supporters of our organisation?

It does not matter who is making the payment, the payment is still problematic if it is in exchange for the voluntary worker doing their voluntary work.

We are keen to provide our voluntary workers with training opportunities, for instance ministry training, to enable them to take up paid work within our or another faith-based organisation in the future. Is this a problem?

You should only provide training to voluntary workers that is necessary for the better performance of their voluntary work. This generally gives quite a lot of scope for diverse training, but you should not provide training that is clearly for a different purpose, as in the example given here. This would take the voluntary worker outside the NMW exemption.

We are a residential religious community, who live and work together. We are exempt from NMW obligations aren't we?

‘Intentional communities’, as they are sometimes described, are the subject of a further NMW exemption. There is no requirement to pay NMW to residential members of a community that is a charity (or established by a charity) with a purpose of practising or advancing a religious belief, and where all or some of its members live together for that purpose. HMRC guidance makes it clear that, to fall within this exception, there must be a core group of people who live together in a physical space to form a community. This would need to be their home as well as their workplace, and the expectation would be for there to be a strong lifestyle or vocational ethos. Any allowance paid to members of the community would need to be on a subsistence basis, related to need rather than to reward. Any non-residential or non-vocational employees would have to be paid NMW as normal.

Find out more

Current information on National Minimum Wage rates is at <https://www.bwbllp.com/knowledge/2018/04/02/employment-knowhow-minimum-wage/>

If you have any questions about the status of volunteers, voluntary workers and workers, please get in touch with your BWB contact, who will be happy to advise you on best practice.