

## A-Z Guide

# VOLUNTEERS



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# Overview

1. Volunteers are people who offer their services on a purely no-reward basis.
2. A volunteer is not an “employee” under the Employment Relations Act 2000 (the Act).
3. The Health and Safety at Work Act 2015 treats volunteers (with exceptions) as if they were employees.
4. Employers should ensure before engaging a volunteer they have a New Zealand residency or a right to be employed in New Zealand. Employers should sight the work permit.

## Introduction

Volunteers are people who offer their services to an organisation, perhaps for charitable or benevolent reasons, on a purely no-reward basis. Volunteers should not be treated like employees as this may cause unwanted expectations. However, employers have similar health and safety obligations in regards to volunteers as they do to their employees.

## Employment Relations Act 2000

The definition of “employee” in the Act does not include a person who does not expect to be, and is not, rewarded for work performed as a volunteer. Therefore, a volunteer is not an employee and should not be given an employment agreement or be expected to abide by any of the attendance provisions that usually appear in employment agreements. Treating volunteers like employees may cause confusion and create unwanted expectations.

It should be made clear that the position is a volunteer position, and that the person will not receive payment or other reward. This should be done in writing. The volunteer should not do work which is integral to the business, such as work that a full-time employee would ordinarily do. You should not receive any economic benefit from the work done by the volunteer. It is also advisable to limit the duration of the hours worked by the volunteer. The longer a person volunteers and the more hours they work, the more likely they are to be an employee.

## Health and Safety at Work Act 2015

Under the Health and Safety at Work Act 2015 employers are, subject to some exceptions, required to treat any person who does volunteer work for the employer as if the volunteer is an employee, in respect of health and safety at work.

Note: a person who is receiving on the job training or gaining work experience is not considered a volunteer under the Health and Safety at Work Act 2015 however, they are given the same protection under the Health and Safety at Work Act 2015.

### Employers' obligations

The Health and Safety at Work Act 2015 defines “workers” to include volunteers. As a PCBU (person conducting a business or undertaking) you have an obligation in respect of your workers to provide a safe workplace, safe systems of work, and to ensure



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that they are not harmed by hazards or risks occurring in or arising out of your workplace.



## Volunteer Worker

Volunteer workers are defined in the Health and Safety at Work Act 2015 as people who regularly work for a PCBU with the knowledge or consent of the PCBU on an ongoing and regular basis and are an integral part of the business or undertaking. In these circumstances you will owe a duty to ensure, so far as reasonably practicable, the health and safety of volunteer workers as if they were any other worker.

Casual volunteers doing certain activities are excluded from the definition of a volunteer worker. These activities are participating in a fund-raising activity, assistance with sports or recreation for an educational institute, sports or recreation club, assistance with activities for an educational institute, and providing care for another person in the volunteer's home.

The Health and Safety at Work Act 2015 stipulates that employers must ensure the health and safety of workers at work in terms of taking all practicable steps to manage hazards and provide information. Interestingly, section 14 of the Health and Safety at Work Act 2015 which deals with worker engagement and participation, does not apply to volunteers. Section 45 dictates the duties of workers in regard to health and safety at work; these apply to volunteers as if they were employees.

Refer to the **A-Z Guide** on the **Health and Safety at Work Act 2015** for more information.

## Best practice

Volunteers should be treated as if they were your employees in most respects. This means that volunteers should be included in:

- Induction programmes – health and safety policies and procedures
- Training programmes
- Supervision procedures
- Provision of protective clothing and equipment
- Accident investigations
- Health monitoring
- Recording of all accidents, incidents, and harm
- Employee participation processes in health and safety matters (subject to limitations)

Volunteers who wish to perform work for you should be made familiar with your health and safety policy and any procedure manuals relevant to the work they are to do. They should undergo the same induction and training processes that your employees do, particularly where they will come into contact with a plant, equipment and chemicals. If your employees would be supervised in the performance of any task or process, so should any volunteers.

Volunteers should agree to abide by your health and safety policy (having read and understood it) in writing, including your reporting procedures. Any failure by a volunteer to agree should be the signal not to allow that person in the workplace. Keeping a record of each volunteer's agreement to abide by your health and safety policies will assist you in establishing that you took all practicable steps to ensure the volunteer's or anyone else's health and safety, if an accident or incident occurs.

Refer to the **A-Z Guides** on **ACC**, and **Hazard Identification and Management** for additional information.

## Immigration Act 2009



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The definition of employment under the Immigration Act 2009 refers to any activity undertaken for gain or reward. Employers should therefore be cautious engaging volunteers who do not possess a relevant work permit in their premises as “*gain*” may be interpreted as work experience. Best practice would be to always ensure volunteers have a work permit applicable to the purpose for which you are engaging them or ring the Immigration Department for clarification.



# Taxing Payments to Volunteers

Although volunteers should not be 'rewarded' for the work they do, or expect to be rewarded, there are situations where they may be paid. In order to come within the Inland Revenue Department's (IRD) definition of 'volunteer', the person must be freely undertaking an activity in New Zealand that:

- Is chosen either by themselves or by a group they are a member of
- Provides a benefit to a community or another person
- Involves no purpose or intention of private financial profit for the person

## Reimbursements

Volunteers may incur expenses as part of the performance of their activities as a volunteer. These payments are generally treated as tax-exempt if they are based on:

- actual expenditure; or
- a reasonable estimate of the likely cost, where the organisation:
  - reimburses before the activity, or
  - when the actual expenditure can't be determined and the reimbursement is based on a reasonable estimate of the likely cost.

Volunteers can be reimbursed for petrol expenses incurred as a result of their volunteer activities in line with the rates set by the IRD from time to time.

## Gifts

Although gift duty was abolished in October 2011 and therefore gift statements are no longer required by the IRD, it is still important for companies to keep proper records of any gifts made to volunteers.

## Honoraria

Where honoraria are paid (that is, discretionary payments made to a volunteer for their service), they are treated as schedular payments. These payments are taxed in accordance with the rates as set by the IRD. Separate rates apply for honoraria paid to school board trustees. For current rates, check with the IRD.

It is important to ensure that volunteers do not expect to be paid for the work they perform. This risks the volunteer engagement being seen as an employment relationship, as they could be said to be performing work for gain or reward. For further information about payments made to volunteers, please speak with your accountant or the IRD.

## Conclusion



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Managing a workplace is a complex task. So, it is useful to document a Volunteers Understanding in writing. If you need any assistance with managing volunteers of any of the types described above in your workplace, contact the AdviceLine team on 0800 300 362.



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## Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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