

Asylum Seekers and Volunteering

Organisations recruiting volunteers from overseas have a duty to ensure they are entitled to volunteer.

Guidance issued by the Home Office allows for asylum seekers to undertake volunteering if they are doing voluntary activity but not voluntary work (unless the Home Office have given permission to work). The Asylum Policy Instruction issued by the Home Office on 1 April 2014 defines voluntary work and volunteering as follows:

Voluntary Work

There is a distinction between voluntary work and volunteering. Volunteers are not workers for the purposes of the national minimum wage and do not qualify for it. Voluntary workers are still defined as workers, but they are exempt from being paid the national minimum wage, so they can give their time for free to charitable or public sector organisations. Key elements in establishing whether someone is a voluntary worker are whether there is an obligation on the individual to perform the work, and in return an obligation on the organisation to provide it; and whether the individual is rewarded for that work, through money or benefits in kind.

Voluntary work cannot be undertaken by asylum seekers or failed asylum seekers awaiting the outcome of an application for asylum or further submissions, unless they have been granted permission to work under Paragraph 360 of the Immigration Rules.

Volunteering

The legal distinction between an employee and a volunteer is complex given the differences between the types of voluntary work and volunteering activities that individuals can be involved in. The principal difference is that volunteering must not amount to unpaid work, or job substitution. In particular:

- ▶ there should be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance for the same);
- ▶ there should be no contractual obligations on the volunteer;
- ▶ the volunteer is helping a registered voluntary or charitable organisation (or organisation that raises funds for either);
- ▶ the volunteering is for a public sector organisation; and
- ▶ the volunteering is not a substitute for employment (i.e. fulfilling a role that a salaried worker would normally fulfil).

You should use the following statements to help you confirm you are offering volunteering activities:

1. There will be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance for the same)
2. There will be no contractual obligations on the volunteer
3. The volunteer is helping a registered voluntary or charitable organisation (or organisation that raises funds for either)
4. The volunteering is for a public sector organisation and
5. The volunteering is not a substitute for employment (i.e. fulfilling a role that a salaried worker would normally fulfil)

If you are in doubt about whether a specific opportunity constitutes voluntary work or volunteering activity, you should seek independent legal advice. The full instruction document can be found by following the link below

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299415/Permission_to_Work_Asy_v6_0.pdf