



# Employing People

## (December 2015)

You need to be clear who the employer is. If the charity/voluntary group is incorporated (e.g. company limited by guarantee, CIO, CIC, or community benefit society) then the organisation itself will be the employer. However if you are an unincorporated body then it will be the trustees/committee members themselves, even if any contract names the organisation as the employer. Any action to tribunals or in the courts will cite the organisation if incorporated or named individuals for unincorporated. If you are unsure as to your status check with BCVS or a lawyer. Ultimately it is the trustees/committee members who must abide by employment law and good practice but can delegate decision making to others (e.g. hiring and firing, disciplinary, health and safety) but any such delegation should be very clear (i.e. in writing with clear boundaries) and backed up by policies and procedures that have been agreed by the committee. Quite often in larger organisations a chief officer/manager will deal with employees on a day to day basis and usually involve trustees/committee members for senior appointments and appeals. Below are the main obligations that a typical employer can expect to address.

- Employers must take recruitment decisions in a fair and non-discriminatory way ([www.gov.uk/employer-preventing-discrimination/recruitment](http://www.gov.uk/employer-preventing-discrimination/recruitment)).
- Employers must check the eligibility of new staff (**and** volunteers) to work in the UK ([www.gov.uk/legal-right-work-uk](http://www.gov.uk/legal-right-work-uk)). You can be fined up to £20,000 per person.
- Employees' tax and NI contributions must be deducted from wages and paid to HM Revenue & Customs ([www.gov.uk/pay-for-employers](http://www.gov.uk/pay-for-employers)). HMRC must be informed online of all payments made to employees either before or on the day they are paid. HMRC has a free simple programme that will deal with all payroll calculations and reporting for up to 9 employees ([www.gov.uk/basic-pay-tools](http://www.gov.uk/basic-pay-tools)).
- If you are paying someone on a self-employed basis it is the employer's responsibility to ensure that this is their correct status or you could be liable for all their back tax and national insurance. The person saying they are registered as self-employed or are paid elsewhere on that basis is not enough. HM Revenue and Customs gives guidance but if you are unsure you need to get a decision from them. You can either contact them or use an online decision making tool at [www.hmrc.gov.uk/calcs/esi.htm](http://www.hmrc.gov.uk/calcs/esi.htm)
- Pay rates must comply with the National Minimum Wage regulations. From 1 October 2015 these are £3.30 for apprentices (16-18 year olds and 19s in their first year), £3.87 for 16/17s, £5.30 for 18-20s and £6.70/hour for over

21s. NB from 1 April 2016 the National Living Wage of £7.20 will apply to over 24s. Employers can be fined and named and shamed for not doing so.

- Employers must pay statutory sick pay to all qualifying employees from the fourth day of incapacity onwards ([www.gov.uk/employers-sick-pay](http://www.gov.uk/employers-sick-pay)).
- Employees must be provided with itemised pay statements.
- Employers must not make unauthorised deductions from workers' wages.
- Employers must automatically enrol eligible employees into a qualifying pension unless an employee opts out. This right is being staged depending on the size of the employer. For more information go to [www.gov.uk/workplace-pensions-employers](http://www.gov.uk/workplace-pensions-employers)
- Employers must ensure that employer liability insurance is in force at all times.
- Employers must give workers a minimum of 5.6 weeks paid annual leave a year, i.e. 28 days for a worker working a five-day week which must be taken in a leave year. [www.gov.uk/calculate-your-holiday-entitlement](http://www.gov.uk/calculate-your-holiday-entitlement) has a useful tool to calculate leave entitlement for part-timers.
- Employers must not ask workers to work an average of more than 48 hours a week unless they have given their voluntary consent in writing ([www.gov.uk/maximum-weekly-working-hours/overview](http://www.gov.uk/maximum-weekly-working-hours/overview)). Employers must provide correct daily and weekly rest periods, e.g. generally for over 18s they must work no more than 6 days out of every 7, or 12 out of every 14 and take a 20-minute break if they work more than 6 hours ([www.gov.uk/rest-breaks-work](http://www.gov.uk/rest-breaks-work)).
- Employers must give employees time off work in specified circumstances other than annual leave (e.g. to deal with an emergency involving a dependant, or for antenatal appointments). Generally employees do not have the right to be paid for this time off but there are some circumstances when they must. [www.gov.uk/browse/employing-people/time-off](http://www.gov.uk/browse/employing-people/time-off) summarises the rights.
- Employers must give serious consideration to requests to work flexibly from employees who have worked at least 26 weeks ([www.gov.uk/flexible-working](http://www.gov.uk/flexible-working)).
- Employers must give employees who are employed for more than a month a written statement of employment particulars within two months of starting work ([www.gov.uk/employment-contracts-and-conditions](http://www.gov.uk/employment-contracts-and-conditions)).
- Employers must ensure that entitlements to maternity, paternity and adoption leave and pay (including unpaid leave) are correctly calculated and given ([www.gov.uk/browse/employing-people/time-off](http://www.gov.uk/browse/employing-people/time-off)).

- Employers must ensure that changes to employment contracts are discussed and agreed with employees or, where there is a collective agreement, with their representatives ([www.gov.uk/your-employment-contract-how-it-can-be-changed](http://www.gov.uk/your-employment-contract-how-it-can-be-changed)).
- Part-time workers must be treated no less favourably than their full-time equivalents, i.e. pay, holiday and other benefits must be the same but pro rata, e.g. a half time worker is entitled to 14 days paid leave a year ([www.gov.uk/part-time-worker-rights](http://www.gov.uk/part-time-worker-rights)). Fixed-term workers must be treated no less favourably than permanent workers ([www.gov.uk/fixed-term-contracts/what-counts-as-a-fixed-term-contract](http://www.gov.uk/fixed-term-contracts/what-counts-as-a-fixed-term-contract)).
- Employers must ensure that work of equal value gets paid at equal rates.
- Employers must not treat any workers less favourably because of their race, nationality, ethnic grouping, sex (e.g. in connection with maternity), disability, age, sexual orientation, religion or philosophical belief, membership or non-membership of a trade union or their marital status. This requirement must be met at every stage of employment including recruitment, promotion and dismissal ([www.gov.uk/employer-preventing-discrimination](http://www.gov.uk/employer-preventing-discrimination)).
- Employers must be prepared to make reasonable adjustments to enable people with disabilities to work ([www.gov.uk/reasonable-adjustments-for-disabled-workers](http://www.gov.uk/reasonable-adjustments-for-disabled-workers)). The government's Access To Work scheme may be able to provide grants ([www.gov.uk/access-to-work](http://www.gov.uk/access-to-work)).
- Employers can only ask questions about spent convictions if they can identify that the job role is exempted. It is illegal to employ (or place a volunteer) in a 'regulated' activity with under 18s or vulnerable adults if they are 'banned' (needs a DBS check [www.bournemouthcvs.org.uk/documents/PCVA.pdf](http://www.bournemouthcvs.org.uk/documents/PCVA.pdf)). It is illegal to request a DBS if you are not entitled to.
- Employers must provide workers with a secure, safe and healthy working environment. A health and safety policy must be in place, and be in written form if there are five or more employees. The Health and Safety Executive has a lot of guides, a good start is [www.hse.gov.uk/simple-health-safety/index.htm](http://www.hse.gov.uk/simple-health-safety/index.htm).
- Employers must ensure that their disciplinary/dismissal and grievance procedures are set out in each employee's statement of employment particulars. Alternatively the statement may refer the employee to a document where they may read the information, e.g. in a staff handbook ([www.gov.uk/taking-disciplinary-action](http://www.gov.uk/taking-disciplinary-action) and [www.gov.uk/handling-employee-grievance](http://www.gov.uk/handling-employee-grievance)).
- Employers must not treat a worker unfairly because they have 'whistleblown' as long as it has been done in the correct way. [www.gov.uk/whistleblowing](http://www.gov.uk/whistleblowing)

- Employers must ensure that any dismissals are not unlawful or unfair ([www.gov.uk/dismiss-staff](http://www.gov.uk/dismiss-staff)).
- Employers must ensure that employees who are dismissed are given the correct notice period. Where redundancy applies, employees with 2 years continuous employment must be given the correct level of redundancy pay ([www.gov.uk/calculate-employee-redundancy-pay](http://www.gov.uk/calculate-employee-redundancy-pay)).
- All staff employed with 2 years continuous employment, including those on a fixed term contract, have the right to claim unfair dismissal ([www.gov.uk/being-taken-to-employment-tribunal-by-employee](http://www.gov.uk/being-taken-to-employment-tribunal-by-employee)).
- There is no longer a statutory retirement age. You cannot force someone to retire unless you can clearly justify it (you will need professional advice). [www.gov.uk/retirement-age](http://www.gov.uk/retirement-age)
- Employers cannot insist that workers join or not join a trade union, nor can they discriminate against someone because of their trade union activity. There is no statutory right to be paid to undertake trade union activities however representatives do have the right to reasonable time off work. [www.gov.uk/working-with-trade-unions/rights-of-employees-in-trade-unions-](http://www.gov.uk/working-with-trade-unions/rights-of-employees-in-trade-unions-)
- Employers must keep any information about staff in line with the Data Protection Act and must provide an employee with a copy of any data held within 40 days of a request. [www.gov.uk/personal-data-my-employer-can-keep-about-me](http://www.gov.uk/personal-data-my-employer-can-keep-about-me)
- Make sure you do not treat volunteers as if they are staff (e.g. pay more than reasonable expenses, insist on attendance, use the same disciplinary/grievance procedures) or they will receive employment rights (<http://knowhownonprofit.org/people/volunteers/keeping/treating>).

More information about many of the rights above can be found on the Gov website at: [www.gov.uk/browse/employing-people](http://www.gov.uk/browse/employing-people). The government agency ACAS ([www.acas.org.uk](http://www.acas.org.uk)) provides a telephone advice line for employers and employees, statutory codes and useful guides on many aspects of managing people and a free conciliation service. The professional body for HR CIPD ([www.cipd.co.uk](http://www.cipd.co.uk)) also has a lot of simple and useful guides to many aspects of managing people, in particular its factsheets ([www.cipd.co.uk/hr-resources/factsheets/default.aspx](http://www.cipd.co.uk/hr-resources/factsheets/default.aspx)). BCVS can help you with the development of employment policies and procedures and give you non-legal advice and support about employment situations. All of our policies and procedures are on our website ([www.bournemouthcvs.org.uk/bcvspolicies.asp](http://www.bournemouthcvs.org.uk/bcvspolicies.asp)).

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