The FA

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Legal status of employees, workers and volunteers

Introduction

The legal status of an individual who does work for a club is important as it determines the extent of any legal rights that they have against the club for which they do work and in turn the duties of the club to them. There are (broadly) three categories of protected individuals under employment law:

- individuals who are **employees** have certain important legal rights called statutory employment rights. The main ones and most commonly raised are the right not to be unfairly dismissed and the right to a statutory redundancy payment (after qualifying service);
- individuals who are **workers** as opposed to employees are entitled to other statutory rights, such as the right to paid annual leave, a maximum working week, rest breaks and an entitlement to receive the National Minimum Wage **(NMW)** (but see the points on voluntary workers below); and
- a wider class of individuals in the workplace are protected from discrimination under the Equality Act 2010.

However there is no single statutory definition of “volunteer” for the purposes of employment legislation.

The Police Act 1997 (Criminal Records) Regulations 2002 (which provide for **CRB** checks) defines a volunteer as “a person engaged in an activity which involves spending time, unpaid (except for travel and other out of pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative.”

Please note that an individual can have a different status for the purposes of employment law and tax law.

Employee Status

An employee is defined as “an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment” (Employment Rights Act 1996 (**ERA 1996**)).

A contract of employment can be oral or in writing.

It has long since been established that the following factors can be key indicators of an employment relationship:

- an agreement exists to provide work or skill in the performance of service for the employer (personal service) in return for a wage or remuneration (mutuality of obligation);
- there is control of the employee by the employer (control); and
- the other terms under which he carries out work are consistent with a contract of service.

This is quite different to a situation to that of a worker.

Workers

Workers are an intermediate category being neither employees nor genuinely self-employed. A worker is defined as an individual who has entered into or works under:

- a contract of employment; or
- any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual (ERA, section 230).

Determining whether an individual is an employee or a worker requires consideration of both law and fact and is not always easy, especially in the case of agency workers. Common types of worker are agency workers, casual workers, home workers and some office holders. There can be situations where people undertaking these roles can become employees so care must be taken to ensure their status remains clear and does not change.

Workers still have some basic rights but not as many as those of an employee. Workers’ statutory rights include:

- protection against unlawful deduction from wages (ERA 1996, section 13);
- paid annual leave (Working Time Directive (**WTD**), reg 13);
- rest breaks (WTD, reg 12);
- maximum working week (Working Time Directive, reg 4);
- NMW – but not for voluntary workers;
- right to be accompanied to a disciplinary or grievance hearing (ERA, section 10);
- protection for making a protected disclosure (ERA, Part IVA);

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- protection under the Data Protection Act 1998;
- right not to suffer detriment for exercising rights as a part-time worker or in respect of trade union membership; and
- protection against unlawful discrimination (Equality Act 2010).

Voluntary workers (as opposed to volunteers) are specifically excluded from the NMW. For the purposes of the National Minimum Wage Act 1998 (**NMWA**), voluntary workers are a category of worker who work for charities, voluntary organisations, associated fund-raising bodies and statutory bodies and who meet the following conditions:

- they receive no monetary payment other than reimbursement of expenses actually incurred or reasonably estimated as likely to have been incurred in the performance of their duties; and
- they receive no benefit in kind other than reasonable subsistence or accommodation.

For these purposes a voluntary organisation is defined as "a body of persons, or the trustees of a trust, which is established only for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, but which is not a charity." That would include any football club registered as a charity or a community amateur sports club or certain other not-for-profit clubs.

HM Revenue & Customs (**HMRC**) gives the following examples of expenses incurred in the performance of a voluntary worker's duties:

- travel to and from the place of volunteering and in the course of voluntary work;
- special clothing or equipment required for the performance of the voluntary work;
- cost of care of dependants needed to enable the voluntary worker to do the voluntary work;
- training but only if it is:
  - necessary to perform the duties of the voluntary worker;
  - for the sole or main purpose of improving the voluntary worker's ability to do the work; or
  - necessarily acquired in the course of the voluntary work.

Where a club which is a voluntary organisation pays for a voluntary worker to receive training in coaching, this constitutes a permitted expense and is consistent with his or her status as a voluntary worker under section 44 of the NMWA.

Please note that the range of benefits which a voluntary worker can receive are relatively narrow. If an individual were given benefits beyond those permitted above, he or she would not qualify as a voluntary worker and would therefore be entitled to the NMA as a worker or employee.

Volunteers

Unlike in an employment relationship, a genuine voluntary arrangement does not give rise to any mutuality of obligation between the volunteer and the club. That means that the club is not obliged to provide any work and the volunteer is not obliged to carry out any work. The fact that an individual may be expected to do training or work minimum hours, need to be supervised or can claim indemnity against expenses is not necessarily viewed as being in return for a minimum work commitment and not therefore mutuality of obligations.

It is advisable for the relationship between a club and any volunteer to be set out in a (non-binding) agreement. Volunteer agreements are generally short, informal in style and phrased in terms of hopes and expectations rather than obligations. It is nonetheless useful to set out the understanding of both parties at the outset of the arrangement, and merely having a written agreement with a volunteer will not itself indicate an employment relationship. This document, together with the practical reality of the arrangements, is key to determining whether the club and individual have entered into a volunteer, worker or employment relationship.

Similarly clubs should set up informal procedures for dealing with grievances and disciplinary issues which are clearly distinct from the procedures used in relation to its workers and employees. This reinforces the distinction in practice between the club's employees and its volunteers.

Clubs should be also careful about how they provide expenses, rewards and gifts, uniforms and equipment, and perks (e.g. free or discounted admissions to events) so these do not create a benefit in exchange for the work undertaken. Otherwise there is a risk that these could be regarded as remuneration for the purposes of income tax and national insurance and may also indicate a worker or employment relationship. However, this does not prevent clubs from providing or paying for training which is necessary or for the main purpose of improving the volunteer's ability to carry out the voluntary coaching work.

Paying for Training

As mentioned above, paying for coaching training is not incompatible with a voluntary worker or volunteer arrangement respectively, provided that the training is necessary or for the main purpose of improving the volunteer's ability to carry out the voluntary coaching work.

However, in the case of a volunteer, it would be advisable not to include such an obligation in the volunteer agreement itself. Instead, the club could amend its volunteer expenses policy so that it will only pay for certain training on condition that the club receives the benefit of the coaching for a particular period, failing which the volunteer must repay the costs or the loan. This means that the volunteer is not obliged to carry on any coaching under the volunteer arrangement itself but the obligation to provide coaching (such as it is) is simply a condition of the expenses policy and the volunteer is free to cease coaching at the club if he or she is willing to repay the costs. Alternatively, the club could structure the payment as a loan which is repayable at any time if the volunteer ceases to work with the club within a particular period.