

# Equality Law for Volunteers

April 2011



## Court case highlights limited protection under equality law for volunteers

While David Cameron's 'Big Society' appears to encourage more volunteers it is important those charities engaging volunteers ensure they get the legal relationship correct. Charities may risk tribunal claims if their volunteers are able to prove that they are, in reality, employees or workers. In a genuine volunteer arrangement, volunteers should be free to provide their services as and when they see fit and there should be no expectation on the part of the charity. This lack of 'mutuality of obligation' will be a major distinction between volunteers and employees. Accordingly, any agreement between the volunteer and the organisation needs to be cautiously drafted to ensure that a contract of employment is not created unintentionally. Volunteers are not entitled to the national minimum wage and do not have protection from unfair dismissal either. It would also appear that a genuine volunteer has no protection against discrimination.

Recently this year, in January, the Court of Appeal in GB decided that, in the case of *X v Mid Sussex Citizens Advice Bureau and others*, a volunteer could not pursue a claim under the Disability Discrimination Act 1995. The Court held that she had no contract and the arrangement was not one that indicated to whom work should be offered. Although the case related to disability discrimination, its principles are equally applicable to all other areas of discrimination. To be consistent with volunteer status, it is important that volunteers are not paid for their time. If they are paid expenses, these should be genuine out-of-pocket expenses rather than a flat-rate allowance. Any expenses over and above this may be regarded as income for tax or benefit claim purposes. In some cases it may even be viewed as a wage.

Clearly no one would expect the majority of those charities engaging volunteers to discriminate against them or to dismiss them for no reason but, in an increasingly litigious society, a number of charities may well be relieved that the courts have confirmed that discrimination rules do not apply. It is worth remembering that tribunal cases involving volunteers have arisen primarily because the individuals concerned thought that they were being treated unfairly. Of course, if organisations treat volunteers properly, this scenario will rarely arise. You should ensure your organisation's agreements or practices with its volunteers do not give rise to any potential claim for employee status.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*