

VOLUNTEER WORKERS

Question: Do unpaid volunteers enjoy the same legal protection as other employees?

Answer: As a general rule, yes.

Brief explanation: All workers, including unpaid volunteers, have a constitutional right to fair labour practices. Yet, "unpaid employees working for charitable organisations" are specifically excluded from the provisions of the Basic Conditions of Employment Act (BCEA) (Section 3). On the face of it, these volunteers enjoy no protection whatsoever. Even child labour seems to be permissible. Does that mean that unpaid persons working for charitable organisations may be exploited by, for example, being required to work excessive hours? The answer is obviously 'no', because then it cannot be argued that they are truly working 'voluntarily'.

The situation with volunteer workers who work for organisations that are not charitable organisations is more straightforward. By implication these workers enjoy the same protections under the BCEA as other employees (except that they are not entitled to pay).

Other labour legislation, such as the Labour Relations Act (LRA), does not specifically exclude any volunteer workers. They could be regarded as employees, even where they are unpaid, but "assist in the carrying on or running of the business". As such they would – at least in theory – be entitled to the same protections as other employees. It is difficult to imagine what employers can do to attract adverse consequences for employers of volunteer workers. However, as mentioned before, unpaid volunteer workers also have a constitutional right to fair labour practices – the LRA and other labour legislation would therefore be interpreted 'purposively' in this regard (which means to give effect to the constitution).

Where volunteer workers are paid a stipend, matters become a bit more interesting – see the article at <http://www.labourwise.co.za/labour-articles/volunteers>.

In conclusion, it would be advisable for employers to treat volunteer workers at least as fairly as all other.

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www.labourwise.co.za is an on-line labour relations service aimed at assisting employers with the implementation of effective labour relations. They can be contacted via the website or info@labourwise.co.za.