

Internships and National Minimum Wage– Frequently Asked Questions

The policies associated with worker status and National Minimum Wage (NMW) are the responsibility of HMRC. We are therefore unable to provide definitive answers to individual queries. This Q & A focuses on the main principles of NMW, with regard to internships, as agreed with HMRC.

Further information and detailed guidance can be obtained from:

- <http://www.hmrc.gov.uk/nmw>
- <http://www.businesslink.gov.uk/NMWlaw>

Q. Can I advertise for an unpaid internship?

A. For national minimum wage purposes there are no special rules in respect of interns. Whether or not someone is entitled to be paid the national minimum wage depends on whether they are a “worker” under national minimum wage legislation. If they are a “worker” they are entitled to be paid at least the national minimum wage unless a specific exemption applies.

A “worker” is someone who works under a contract of employment or any other kind of contract (express or implied) whereby they undertake to do work personally for someone else (and they are not genuinely self-employed).

A contract does not have to be written and can be oral or implied. Key elements in establishing whether someone has a worker’s contract include:

- whether there is an obligation on the individual to perform the work and an obligation on the employer to provide the work, and
- whether the individual is rewarded for the work by money or benefits.

So you can advertise unpaid internships but if the actual working arrangements are such that the person is a “worker” then you will have to pay them at least the national minimum wage by law.

If your advert offers a reward for the work to be performed, either in the form of a monetary payment or a benefit in kind, then this would suggest the person is likely to be a “worker”. The greater the reward the more likely that a worker’s contract will be formed and that the person will be a “worker” and entitled to the national minimum wage.

Q. Does it matter what I call the internship/job?

A. Whether someone is entitled to the national minimum wage depends on the actual circumstances of the arrangement, not the title given to the job or the role.

Labels such as work experience, internships, voluntary work or volunteering will not make any difference. If the circumstances mean that the person undertaking the role is a “worker” under national minimum wage legislation, then they will be entitled to be paid at least the national minimum wage unless one of the specific exemptions applies.

Q. What distinguishes a worker from a volunteer?

A. If you have a contract of employment then you are a **worker**. Even if you do not have a contract of employment, you are a worker if you are doing work personally for someone else under a worker's contract, such as a contract to personally perform services, and are not genuinely self-employed. The contract does not need to be written - it may be an implied or oral contract, so the absence of a written contract does not automatically mean that someone is not a worker.

A **volunteer** does not have any form of contract of employment or contract to perform work or provide services. They are not workers and therefore not covered by the [National Minimum Wage Act 1998](#). Volunteers do not qualify for the national minimum wage (NMW) because they are not workers. Volunteers can volunteer for anybody, not just organisations in the voluntary sector.

Voluntary worker is a term which is used in the National Minimum Wage Act 1998. It has a specific meaning for NMW purposes. Voluntary workers are a class of workers who have an exemption from qualifying for the NMW. The exemption is at Section 44 of the National Minimum Wage Act 1998. Voluntary workers may not be called such by the organisation who engages them. They may be people who consider themselves 'volunteers' but who are in fact workers due to the arrangements under which they work. However, if such individuals meet the conditions of the voluntary worker exemption, they do not qualify for the NMW. This exemption is designed to allow people who genuinely wish to work without profit for good causes to continue to do so without fear of qualifying for the NMW.

The key differences between workers, voluntary workers and volunteers			
	Characteristics	Employer	Qualify for NMW
Volunteer	Not a worker	Any employer or organisation	Does not qualify
Worker	Works under a contract of employment or a contract personally to perform work or provide services	Any employer or organisation	Qualifies, unless a specific exemption applies
Voluntary worker	Works under a contract of employment or a contract personally to perform work or provide services	Charity, voluntary organisation, associated fund raising body or statutory body	Does not qualify due to a specific exemption

Q. Do I have to pay someone doing work experience?

A. Someone who enters into an agreement or contract to work for experience will be a “worker” for national minimum wage purposes and entitled to be paid the national minimum wage in the normal way, unless they are a genuine volunteer or fall into one of the groups who are exempt.

In national minimum wage legislation there is a specific exemption for “workers” who are students undertaking work experience lasting up to one year as part of a UK further or higher education course. Otherwise, students are entitled to be paid at least the national minimum wage in the normal way including when they are:

- studying at non UK educational establishments,
- doing work which is not a specific requirement of their course, or
- doing work which is a requirement of their course but which lasts longer than one year.

Information on work experience/internships and NMW can be found at <http://www.businesslink.gov.uk/workexperience&internships>

Q. If someone volunteers to work for me, do they have to be paid the national minimum wage?

A. Genuine volunteers do not have to be paid the national minimum wage as they are not “workers” under the national minimum wage legislation. Just calling someone a “volunteer” does not mean they don’t have to be paid the national minimum wage. It depends on the circumstances under which they are engaged and whether or not the arrangements mean they are a “worker” for national minimum wage purposes.

Volunteers are people who are under no obligation to perform work or carry out your instructions. They have no contract or formal arrangement and so can come and go as they please. They have no expectation of and do not receive any reward for the work they do. A reward is not restricted to simply being a payment in the form of money but can be something like the provision of benefits or training.

Where a volunteer incurs costs in the course of their work it is possible for such expenses to be reimbursed and not treated as a reward as long as the payment is reasonable in the circumstances of the arrangement. Reimbursement of reasonable out of pocket expenses alone is unlikely to change an individual's status to one of a worker. Each case would be considered on its individual facts. You may prefer to reimburse only expenses actually incurred and many volunteers prefer this. If reimbursing estimated expenses, you must be able to explain how you arrived at the level of expenses and be able to justify why this was a reasonable estimate. Care should always be taken to ensure that the provision of expenses does not suggest that an individual is a worker. Should this happen, a worker would be entitled to the NMW unless a specific exemption applied, such as the voluntary worker exemption.

<http://www.businesslink.gov.uk/volunteering>

Q. Does someone working for a charity have to be paid?

A. There is a specific exemption in national minimum wage legislation for “workers” who work for a charity, a voluntary organisation, an associated fund raising body or a statutory body. However, specific conditions must also be met. These are that the person must not receive:

- any monetary payments, except reimbursement of expenses, nor
- any benefits (except the provision of reasonable subsistence and accommodation).

There is another specific exemption for a “worker” engaged by one charity but is placed to work with another charity, voluntary organisation, associated fund raising body or statutory body. In these circumstances, the criteria above must be met except that the person doing the work can receive money to cover their subsistence.

<http://www.businesslink.gov.uk/volunteering>

Q. What if an intern or someone undertaking work experience thinks they are being exploited?

A. If someone thinks they are a “worker” and not being paid the national minimum wage, they can ring the Pay and Work Rights Helpline on 0800 917 2368 (Text phone 0800 121 4042). The Helpline is open from 8 am to 8 pm (Monday to Friday) and 9am to 1pm on Saturdays.

Q. Where can a business find further information about the national minimum wage?

A. Businesses can obtain help and information on national minimum wage matters by calling the Pay and Work Rights helpline on 0800 917 2368. The document Understanding National Minimum Wage Law can be downloaded at <http://www.businesslink.gov.uk/guide>.