

BRIEF CASE

What is the best way to insure your volunteers?

Smaller organisations may insure volunteers as third parties because it's cheaper. Are they right?

Volunteers are unpaid. How can they be employees?

The definition of an employee is a complex issue covered well here; www.gov.uk/employment-status/overview. The same site also refers to volunteers and notes that unless they have a contract of employment, volunteers do not have the same rights as employees; www.gov.uk/volunteering/volunteers-rights.

NCVO has some very sensible advice on the potential issues of volunteers being deemed employees and the importance of paid employees and volunteers remaining distinct from one another; www.knowhownonprofit.org/people/volunteers/keeping/treating.

So, the relevant question in terms of insurance shouldn't be, 'are volunteers employees?' but 'should they be insured as employees?'

What are the choices?

Many smaller charities and voluntary organisations try to save money by buying Public Liability (PL) insurance but not Employer's Liability (EL) insurance. PL includes cover for accidental injury caused by the charity or its staff ('the insured') and sustained by any person not employed; they consider their volunteers to be third parties.

Others take the view that they have the same duty to care to their volunteers as they do to their employees and make sure their insurer provides cover to volunteers through their Employers Liability policy.

Why cover volunteers under Employers' Liability?

If you are unsure about the differences between Public and Employer's Liability, you should speak to your insurer or broker.

In brief, a Public Liability policy protects you against claims from members of the public whilst Employer's Liability protects you against claims from your employees.

The Charity Commission advise you to treat your volunteers in the same way as your employees and, in addition to providing adequate training, supervision and support, to ensure volunteers are covered by your insurance. Volunteers should be specifically referred to under either your Employers' or Public Liability insurance and your insurer should be made aware of your volunteers.

Having volunteers insured as employees under your Employers' Liability can provide better cover in the case of injury, as there is a lower threshold for negligence with Employers' Liability rather than Public Liability. Combined with fewer exclusions and conditions, this makes a claim against Employer's Liability more likely to be covered by insurers than a claim against your Public Liability.

It's the courts that decide...

A volunteer who suffers injury while acting on behalf of the charity or voluntary organisation may choose to take you to court. The court will judge the case on its merits and may decide the volunteer was acting as an employee. The basis for this decision is likely to turn on the court's view as to whether the volunteer was 'acting under direction' and if there was a 'master/servant relationship'.

You could then have the situation where you must pay any award; the insurer won't consider your claim under your Public Liability policy and you don't have Employers Liability insurance. Having both EL and PL ensures this scenario cannot happen.

Insuring Volunteers KC21.100

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