

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