



National Minimum Wage Dispute

Legal Advice Clinic
Leicester Law School
University Road
Leicester LE1 7RH

Dear Mr Mann and Mrs Yeomans,

We write to you further to your email sent on the 23rd of May 2022, to advise you about your legal position following our research into your situation.

Background

In your email, you explained your clinic "From the Ground Up" has restarted a nationwide training programme for ex-offenders training in community orchards in their local community.

You elaborated on how this scheme has gone particularly well and has become a great way for ex-offenders to re-integrate into society after they have spent time in prison, you also gave us an insight into how you have been able to employ some of these ex-offenders who have successfully completed the course and have been able to become orchard trainers themselves.

In your email to us you described your wish to expand the scheme to offenders who are currently serving time inside prison rather than solely just ex-offenders. This was in bid to improve the quality of gardens inside various UK prisons and to expand your current employment network.

Following the meeting we had with you on the 23rd of May 2022 you further informed us about the impact that the coronavirus pandemic had on the charity's operations, and how as a result of the pandemic the company had to undergo a series of redundancies in order to reduce the number of permanently employed staff. Which is why there is such a strong reliance on part-time workers such as the ex-offenders

Your request for advice

In relation to your issue, you informed us that you wish to modify the set up for your in-prison sessions as you have limited time, you have made it clear to us that you are unsure who should be paid national minimum wage within your Orchard scheme. In addition to this, you seek clarification over the differences between national minimum wage and living wage.

The legal position

Charity workers are entitled to minimum wage in the same way as any other worker. Currently, the minimum wage is £9.50 for a worker over 23 years old (also the national living wage), £9.18 for those aged 21 to 22, £6.83 for people 18-20 and £4.81 for those under 18. This means that the Advanced Training Officers, as contractors, are entitled to employment rights meaning they would need a pay rise of 50p per hour from their current wage of £9 per hour to reach the minimum wage of £9.50 per hour as of April 2022.

A working week does not include transport to and from work (if there is a fixed workplace) or travelling outside normal working hours. If the transport and discussion related to work is treated as 'working time' under a contract, this will therefore count as working time and should be paid for.

The experienced volunteers working in the prisons can create a worker's contract and are entitled to the national minimum wage if the organisation offers them inducements to: Secure a reliable contribution, and/or, to reward their performance. If a contract exists that contains mutual obligations, the volunteer will be classed



as a worker. If the volunteer is bound to your organisation either by inference, agreement, custom or practice, the person is a worker. If your organisation imposes obligations, requirements or standards on the volunteer and asserts this by detriment to the person such as withdrawal of training or rewards, that person is a worker.

Next steps

Workers paid below the minimum wage can ask the employer in writing to see their employment record. If there are disputes, workers can call the confidential Acas helpline or look at the Acas helpline online. Workers can also make a complaint to HM Revenue and Customs. If the employer still refuses payment, HMRC will send them a notice for the arrears plus a fine for not paying the minimum wage. HMRC can also take them employer to court on behalf of the worker if they still refuse to pay.

We hope that this information should help you to understand the law around the minimum wage and the legal line between volunteers and workers allowing you to effectively run your charity.

Yours Sincerely,

Joshua Akuffo and Charlie Padfield