

The fine line between workers volunteering and employment

Opinion

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Last weekend the Wairarapa Garden Tour was again held as a big fundraiser for the Pūkaha National Wildlife Centre, allowing the centre to continue its conservation work in its 940ha native forest reserve north of Masterton.

Like a lot of fundraising events, it is supported by a dedicated team of volunteers who make the event work so successfully.

Tūao Aotearoa Volunteering New Zealand reports that about 21.5% of New Zealanders undertake formal volunteer work, according to information from Statistics New Zealand. The value of formal volunteering is estimated at \$4 billion a year.

New Zealanders contribute a total of about 159 million hours of formal volunteer labour each year. Nearly 12% undertake informal volunteering work, contributing a further total of 7.8m hours of volunteer labour each year to these figures.

While this important work usually benefits society generally, it does have some challenges that need to be managed or the relationship between the employer and the volunteer can quickly become blurred.

The Employment Relations Act excludes a volunteer who does not expect to be rewarded and receives no reward for the work performed as a volunteer. Reward is a broad concept that can include intangible or non-monetary benefits. It has led



Fundraising events like the Wairarapa Garden Tour rely on dedicated volunteers, but there are still challenges that need to be managed.

to some outcomes that at least one of the parties to the arrangement did not expect.

For example, in *The Salad Bowl Ltd v Thornley*, Amberleigh Howe-Thornley was told at her interview that there was no reason why she would not be hired if she satisfactorily completed a three-hour work trial.

During the trial, she was provided with a salad, and this was considered to be sufficient to amount to a "reward".

In another case, in *Labour Inspector v Alpine Motor Inn and Cafe*, the worker was in New Zealand on a student visa, which allowed her to work up to 20 hours a week.

She applied for a housekeeper position. Alpine Motor Inn and Cafe intended to employ her fulltime, but could not do so while she was waiting for a work visa to arrive. In the meantime, she was given accommodation and food, and began to

perform some work.

The motor inn said the worker was a volunteer who worked because she was bored. The Employment Relations Authority was not convinced, and found that the food and lodging amounted to a reward.

If the parties want a volunteer relationship, it is important that they make it clear the worker does not expect payment and does not receive payment. Otherwise, the worker may claim to be an employee.

If the worker is successful in their claim, they will be entitled to minimum entitlements. They will have to be paid minimum wage and cannot be dismissed unless it is justified.

Even if it is clear that the parties are in a volunteer relationship, the organisation should nevertheless be mindful that it may still have other "employer"-type obligations to the volunteer. The Health and Safety at Work Act covers some volunteer workers, as does the Human Rights Act in respect of discrimination.

In the case of the Wairarapa Garden Tour volunteers, they receive a free T-shirt. They are also given free access to the gardens on the tour. Such "freebies" could easily amount to a "reward" if the worker claimed that they expected to get rewarded for their work.

Thankfully, it is rare that volunteers in genuine volunteer positions challenge the relationship.

David Burton is an employment law barrister.