
Covid 19 Employment Law Series
III: Emergency Volunteers: What can
employers expect?



Tim Wilkinson, 30.3.20

1. The Government's original target of securing 250,000 volunteers to help with NHS and social care was surpassed in less than twenty-four hours. With the number of volunteers now heading towards 750,000, it is important to consider the impact this may have. Many volunteers may of course be unemployed, but many more will come from the existing workforce. This article looks at what is required of the volunteers and, in return, their employers, in relation to this new form of statutory unpaid leave.
2. The Coronavirus Act 2020 deals with emergency volunteers in sections 8 and 9 and in Schedule 7. Whilst the CA 2020 is now in force, the provisions relating to emergency volunteers require statutory instrument and are therefore not yet in play.
3. The interplay with those employees who have been furloughed is yet to be definitively set out. It is clear from the Coronavirus Job Retention Scheme that volunteer work is permissible. It seems likely that volunteering as an emergency volunteer is permissible under the Scheme and will not 'break' furlough; easing any fears that volunteering within the first three weeks of furlough would leave the worker short of the minimum three week period for furlough, and the employer unable to recover the 80% for the period prior to volunteering commencing. The likely scenario is that the volunteer remains furloughed but, for the time spent on emergency leave, the employer will not be required to pay their salary and they will instead need to recover lost earnings through the emergency volunteer scheme (see below).
4. An 'emergency volunteer' is someone who is certified as such; a potential volunteer must obtain an 'emergency volunteering certificate', certifying that they have been approved by an appropriate authority and that they will be acting as an emergency volunteer, for a particular time period. 'Appropriate authorities' are listed in paragraph 4 of Schedule 7; essentially health and local authorities.
5. Emergency leave applies to workers (not just employees), but not everyone is eligible to take emergency volunteer leave. A list of those who do not qualify is set out in paragraph 3 of Schedule 7. Most notably, those who work in an undertaking with a headcount of staff of less than ten and those who work for the Crown.
6. Once the volunteer has their certificate, they are able to take emergency volunteer leave for a specific period of time. This can be two, three or four weeks within any one 'volunteering period'. The first volunteering period is the sixteen week period starting on the day on which

the provisions come into force. Thus, the maximum that can be taken at any one time is four weeks but, in theory, a volunteer could take the last four weeks of the first volunteering period and the first four weeks of the next volunteering period, to make a block period of eight weeks (assuming there is a second period and that it runs straight on from the first).

7. In order to be able to take emergency volunteer leave the volunteer must, no later than three working days before the first day specified on the certificate, inform the employer in writing of their intention to take volunteer leave and the period in question, and provide the employer with a copy of the certificate.
8. Once taking emergency volunteer leave, a volunteer is entitled to the benefits of all terms and conditions of employment as if they had not been absent, save for "remuneration". This means that they are not entitled to receive salary, but arguably would be entitled to other benefits such as a company car (section 5 of Schedule 7 specifically refers to remuneration as being wage or salary). The pension provisions at paragraph 7 of Schedule 7 set out that, in relation to pension rights, the volunteer is to be treated as if not on emergency volunteer leave.
9. Following the period of volunteering, a worker is entitled to return to the job they had been employed to do prior to leaving. They must not be subjected to a detriment (new section 47H of the Employment Rights Act 1996), on the grounds that they have sought to take or have taken emergency volunteer leave or because the employer thought that they were likely to take it. Similarly, if the reason or principal reason for dismissal is because they sought, took or were believed likely to take said leave, the dismissal will be automatically unfair (new section 104H). There will be no need to have the two-year qualifying period.
10. Thus, employers will only receive a few days' warning about workers leaving to volunteer. They will not have to pay their workers but will be expected to honour the other terms of the contract and to ensure that they return to their job, do not suffer detriment and are not dismissed because of their decision. Volunteers will not receive their salary but section 9 of the CA 2020 obliges the Secretary of State to make provision for compensation (in respect of loss of earnings, travel and sustenance), but the details of such compensation remain to be seen.

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