



Employee Status/Self-Employed

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FACTSHEET – Employee Status/Self-Employed

What is employment status?

In order to recruit someone with the correct employment status, it is important to understand the different relationships which might arise between the parties. In the employment law context, there are three different categories:

1. Employee – an individual working under a contract of employment with obligations to work generally at set times, under the control of their employer.
2. Genuinely self-employed – covers individuals engaged to provide specific expertise for a particular project or purpose (and will include, for example, independent contractors, freelancers, consultants etc).
3. Worker – an intermediate hybrid category, created by statute. It covers people who do not reach the higher pass mark to qualify as an employee but nonetheless there are a number of features of the relationship which point towards employment. This is only relevant for employment law purposes, not tax purposes (but see our comments on the Employment Status for tax tool below).

When assessing the question of employment status, the contractual documentation will be the starting point but is not conclusive. Instead, the courts have identified a number of factors which will be taken into account when considering status, including mutuality of obligation, personal service and control.

Why is employment status important?

The distinction is important because it affects the rights and protections granted to individuals and the way in which they are taxed. 'Employees' for example have significantly more rights than any other category. 'Workers' have fewer employment rights, but nevertheless are still afforded a number of important protections, including the right to statutory sick pay, paid annual leave and the National Minimum Wage.

Legal decisions on employment status

Only a court or employment tribunal can make a final decision on someone's employment status. Someone can still be classed as an 'employee' or 'worker' even



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when they are taxed on a self-employed basis. The court or tribunal will look at the employment relationship between the person and business.

You are a client if you receive services from a worker or a contractor (self-employed person).

Services from an Intermediary (worker or company)

The off-payroll working rules make sure workers' pay broadly the same tax and National Insurance contributions as an employee. The off-payroll working rules can apply if a worker provides their services through an intermediary. The intermediary will normally be the worker's own personal service company, but could also be a partnership, a managed service company or an individual.

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.

If the rules apply, Income Tax and National Insurance contributions must be deducted from fees and paid to HMRC. These rules are sometimes known as 'IR35'.

Self-employed or contractor

A self-employed person will run their own business and take responsibility for the success of the business and are more likely to provide a service for a client. Although a self-employed person will not have the same employment rights and responsibilities as employees or workers.

Contractors can be self-employed, a worker, or employee if they work for a client and are employed by an agency. There is a special scheme for self-employed contractor and sub-contractors in the construction industry. Under this the **Construction Industry Scheme** contractors deduct money from a subcontract as advance payments towards their tax and National Insurance. This scheme covers most construction work to buildings, including site preparation, decorating and refurbishment.

What factors point to false Self-employment?



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Bad employers often devise their contract documentation carefully to make it look as if their workforce is 'self-employed' when it is obvious from their actual working practices that this is not the case.