

## Employment status

The status of the staff member is important because this will determine their legal rights and protections and the obligations the employer owes to them. There are three broad types of employment status; an individual may be:

- an employee
- a worker
- self-employed (including partners and other office holders).

In any consideration of employment status, the main questions are:

- Is the individual required to provide their service personally? If it is possible for the individual to send a substitute then personal service may not be a crucial requirement of the relationship.
- Is there an obligation on the employer to provide work and an obligation on the individual to do that work if provided? If not, there may not be mutuality of obligation between the parties.
- Does the employer exercise sufficient control over the way in which the individual carries out the work for the relationship to be properly regarded as an employment relationship? If the individual is free to complete the work as they decide, then this points towards self-employment (although, in the modern workplace, the question of control can be difficult to establish, particularly if the worker is senior).

Personal service, mutuality of obligation and sufficient control by the employer are often referred to as the 'irreducible minimum' of an employment relationship. Even where this irreducible minimum has been established, a tribunal will look at the overall picture and consider whether there are any other elements that suggest self-employment, rather than employed status. For example, does the employee provide their own work equipment at their own expense?

## Information needed to establish employment status

The following factors indicate that an individual may either be an employee or self-employed. Individuals not meeting the higher benchmark of being an 'employee' may still be 'workers'. Workers are entitled to fewer statutory rights than employees, but do have some key legal rights, including paid holiday, protection from discrimination, entitlement to the national minimum wage and protection against unlawful deduction from wages.

In determining employment status, the courts, tribunals and HM Revenue and Customs (HMRC) will look at all aspects of the arrangement and no single test will be conclusive in all cases. In addition, tribunals and HMRC may have different approaches to this test.

### Factors indicating employment status:

#### *Mutual obligations*

The company is under an obligation to provide the individual with regular work and the individual is under an obligation to be available to do the work.

#### *Personal service*

The individual is required to provide their services personally. Either there is no right to appoint a substitute or any right of appointment is subject to the company's approval and may only be used in certain situations (usually where the individual is unable, rather than unwilling, to work).

### *Control*

The individual is under the control of the company to such a degree as to make the company their 'master'. In other words, the company controls what the individual does, how they do it and when they do it. However, those holding senior, professional or skilled positions may retain significant control over how they carry out their work but still be employees. The individual is also expected to conform to standards of, for example, behaviour or dress expected of others within the same working environment.

### *Exclusivity*

The individual is not normally free to work for other organisations without the express permission of the company. The individual may be subject to restrictive covenants in their contract.

### *Nature and length of the engagement*

The length of the engagement is not determined (with the exception of fixed-term contracts) and does not relate to the performance of a specific task.

### *Pay and benefits*

The individual is paid a fixed amount on a regular payment date, irrespective of performance targets or completion of a specific task (however, note that shift workers or workers who are paid commission may be employees). They may receive a pension, bonus, private medical insurance, company car or other benefit and be entitled to company sick pay.

### *Integration*

The individual is integrated into the company. For example, they perform services that are similar to, or substantially the same as, those performed by an employee, their name appears on the internal telephone directory, they have a company e-mail address, they wear a uniform and they have a company business card.

### *Facilities and equipment*

The company provides the individual with the facilities and equipment required to carry out their job.

### *Financial risk*

The individual is paid even if there is not sufficient work to keep them fully occupied. The individual assumes no financial risk in working for the company.

### *Taxation*

The individual is not responsible for paying income tax and national insurance contributions (NICs) on their earnings.

## **Factors indicating self-employed status**

### *Mutual obligations*

The company is not obliged to offer regular or frequent work and the individual has no obligation to accept any work that is offered.

### *Control*

The individual has the ability to determine when and how they work and is not under the direct supervision of the company.

### *Personal service*

The individual is not required to carry out the services personally and has an unqualified right to appoint a substitute.

### *Exclusivity*

The individual is free to provide their services to whomever they choose without operating exclusively for one organisation.

### *Nature and length of the engagement*

The individual is engaged for a finite period to carry out a specific task or project.

### *Pay and benefits*

The individual is paid on completion of a specific task or project or on commission only. They are not entitled to participate in any benefit schemes and will not normally be paid overtime.

### *Integration*

The individual is not sufficiently integrated within the company to have a defined role and does not perform services similar to, or substantially the same as, those performed by an employee.

### *Facilities and equipment*

The individual provides their own equipment and materials in order to perform the services.

### *Financial risk*

The individual risks their own capital in the business and will be personally responsible for any losses arising from their work. They may be required to correct any unsatisfactory work in their own time and at their own expense. Conversely, they may have the opportunity to profit from the success of the project.

### *Taxation*

The individual is responsible for paying their own income tax and NICs on their earnings and is responsible for registering for VAT if the level of their supplies exceeds the relevant registration limit.