

CLUB LIFE

Empower, Engage, Sustain

Employment status guidelines

Employment status can be quite a complex issue, and the legislation can be quite ambiguous. It is commonly thought that engaging someone as a self-employed contract or consultant will result in cost savings, but this is a very risky assumption and would not hold up in an employment tribunal. The following guidelines should help your decision making regarding the employment status of an individual, and includes some 'quick' questions for easy reference.

Employed or self-employed?

A worker's employment status, that is whether they are employed (on a contract of service) or self-employed (contract for services), is not a matter of choice and depends upon the terms and conditions of the relevant engagement. **What the parties call their relationship, or what they consider it to be, is not conclusive. It is the reality of the relationship that matters.**

Relevant factors used to determine employment status

The following factors are not an exhaustive list but they do include the more important ones:

Right of substitution

It is a necessary condition of a contract of service that the employee is required to provide his or her services personally. Consideration must therefore be given to whether or not a worker could provide a relevantly qualified replacement in his or her absence. Where the worker has to pay that person this would be regarded as an indicator of self-employment.

Can they hire someone to do the work or engage helpers at their own expense?	If YES , likely to be self-employed
	If NO , likely to be an employee



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Mutuality of obligation

The minimum obligations that are necessary for a contract of service are the obligation on the part of the individual to give personal service and the obligation on the part of the employer to pay them for that service.

An **employment contract** will often also indicate that the employer will provide work for the duration of the contract during the agreed working hours.

However, lack of mutuality of obligation does not automatically make the individual self-employed. A **casual worker or zero hours contract**, whilst still a contract of service, will not have mutuality of obligation as the employer will not be required to provide regular work and the individual is not obliged to accept work offered.

Can they work a set amount of hours?	If YES , likely to be an employee
	If NO , likely to be self-employed or Casual worker
Can the individual turn down work?	If YES , likely to be self-employed or Casual worker
	If NO , likely to be an employee

Right of control

The employee must be subject to a certain degree of control by the employer although control need not be exercised in practice. It is the right of control that matters. The employer may control how an employee performs his or her services, what tasks have to be performed, when and, or where they must be performed.

The self-employed person is more likely to have the freedom to do work when, where and how he or she wants.

Can someone move them from task to task?	If YES , likely to be an employee
	If NO , likely to be self-employed
Can someone tell them at any time what to do, where to carry out the work or when and how to do it?	If YES , likely to be an employee
	If NO , likely to be self-employed



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Provision of own equipment

A self-employed contractor generally provides whatever equipment is needed to do the job. The provision of significant equipment (and, or materials) which is fundamental to the engagement is of particular importance.

Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?	If YES , likely to be self-employed
	If NO , likely to be an employee

Financial risk

Individuals who risk their own money by, for example, buying assets needed for the job and bearing the running costs and paying for overheads and large quantities of materials, are almost certainly self-employed. Employees are not usually expected to risk their own capital. Self-employed workers may also be required to rectify unsatisfactory work in their own time for no additional reward.

Financial risk could also take the form of quoting a fixed price for a job, with the consequent risk of bearing the additional costs if the job overruns. The risk of making a loss is a very strong indicator of self-employment and can be decisive on its own.

Do they risk their own money?	If YES , likely to be self-employed
	If NO , likely to be an employee
Do they agree to do a job for a fixed price regardless of how long the job may take?	If YES , likely to be self-employed
	If NO , likely to be an employee
Do they have to correct unsatisfactory work in their own time and at their own expense?	If YES , likely to be self-employed
	If NO , likely to be an employee

Involvement in the organisation

Establishing whether a person becomes 'part and parcel' of a client's organisation can be a useful indicator in some situations. For example, someone taken on to manage a client's staff will normally be seen as an integral part of the client's organisation and this may be seen as a strong indicator of employment. If they receive full induction, appear on organisational charts and are subject to all of the organization's policies and procedures, they are likely to be employed.

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Employee-type benefits

The presence, in a contract, of benefits such as paid leave, membership of firm's pension scheme, right to car park space, canteen facilities and so on is a good indicator that an employment relationship exists. A contract of employment may also contain access to a grievance procedure and the worker may be subject to disciplinary procedures.

Can they get overtime pay or bonus payment?	If YES , likely to be an employee
	If NO , likely to be self-employed

Final considerations:

Risks

An individual's statutory allowances and entitlements will be dictated by their employment status. If the employment status is found to have been incorrectly assigned the employer may be required to back date certain entitlements. As an employee, they also have the right to bring employment tribunal claims such as unfair or wrongful dismissal. A self-employed individual can still bring these claims in conjunction with a claim relating to their employment status.

Mutual intention

The intention of both parties can be decisive where the factors pointing to employment and to self-employment are evenly balanced. But a stated intention, for example, for self-employment is of no consequence where the facts point clearly to employment.

Tax entitlements

A worker's employment status will determine the charge to tax on income from that employment or self-employment. It will also determine the class of NICs, which are to be paid. The tax and National Insurance contributions (NICs) rules do, however, contain some special rules that apply to certain categories of worker in certain circumstances.

For a HMRC 'view' of your employment status or that of your workers use the [Employment Status Indicator \(ESI\) tool](#). Further help and advice on employment status issues for tax and NICs is available by phoning HMRC on 0845 3000 627.

Casual workers

A casual worker is someone who is able to work on a flexible basis, usually for a short period of time, to meet changing demands and peak workloads. They can be engaged on zero hours, seasonal or 'as and when' contracts. They are classed as a worker and have statutory entitlements of:

- holiday pay
- National Minimum Wage
- protection from discrimination

Casual workers should not be used to 'trial' an individual, nor should they be engaged into regular work with a pattern.

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