

Employment status indicators

A useful guide

Employment status

A worker's employment status is not a matter of choice; it is based on the terms and conditions of the relevant engagement.

Tax legislation does not tell us whether a worker is employed or self employed.

The distinction between the two is based on HM Revenue & Customs practice and case law.

Certain indicators in the relationship between the worker and the engager point to employment and others may point to self employment.

The table below highlights some of the indicators used.

No particular indicator is conclusive in its own right and the relationship must be considered in its entirety.

Factors indicating that a worker is...

Indicator	Factors indicating that a worker is...	
	Self employed?	Employee?
Can someone tell the worker at what time to work, where to carry out the work and how to perform the work?	<p>Usually, no.</p> <p>A self employed worker is providing a contract <u>for</u> services and the detail of how those services are provided can be at his discretion.</p> <p>However, the hours that the worker is able to work may be driven in practice by the opening hours of the engager's premises, for example.</p>	<p>Yes.</p> <p>An employee is providing a contract <u>of</u> service and being under the "control" of the employer is a key feature.</p> <p>This indicator may be less definitive with a senior employee, who would be expected to have much more autonomy in their role.</p>
Is the worker obliged to undertake the work themselves?	<p>Generally, no.</p> <p>The right to send a substitute would normally be accepted; but the courts will look past the contract and to the reality of the arrangement.</p> <p>In the context of engaging a professional or specialist in a long term project, it may be impractical to find a suitable substitution, so in effect the worker will be obliged to undertake the work themselves in order to satisfy the contract.</p> <p>A self employed worker may engage helpers at their own expense.</p>	<p>Yes.</p> <p>Substitution is not usually permitted in an employment relationship.</p> <p>An employed worker may not engage others to help him complete the work assigned.</p>
Is there a mutuality of obligation between parties?	<p>No.</p> <p>The worker is not obliged to accept an offer of work; the engager is not obliged to find work for the worker.</p>	<p>Yes.</p> <p>The engager will be obliged to provide work and the worker obliged to accept the work offered.</p>
Is the worker integrated into the engager's business?	<p>Usually, no.</p> <p>A self employed individual will remain peripheral to the other party's business and not have management or administrative responsibilities.</p>	<p>Usually, yes.</p> <p>An employee will be central to the engager's business.</p>

	Factors indicating that a worker is...	
Indicator	Self employed?	Employee?
Does the worker risk his own money?	Normally, yes. A key indicator of self employment is the degree of financial risk. The self employed worker will be able to "profit" by completing a task efficiently and be required to correct unsatisfactory work in their own time and at their own expense. The responsibility of insuring against liability remains with the worker.	No. The worker will not incur the risks of running the business. The worker receives a salary in exchange for his services.
Does the worker regularly engage with a different number of people?	Usually, yes. This is not conclusive, but a contract with one engager will become an indicator of employment, particularly if it is for a long or extended period.	Usually, no. Although it is possible to be employed under several contracts of employment; where there is only one engagement (and particularly where it is of a long duration), this points to an employment relationship.
Does the worker provide the equipment needed to do his job?	Yes. This may depend upon the industry, but a self employed worker would generally be expected to come prepared for the job. He must also hold his own insurance for professional indemnity, product risk etc.	No. With the exception of small items, it would be usual to expect an employer to provide tools for an employee to complete their work.
Is the worker paid by the hour, the week or the month?	Usually, no. Work will be priced by completion of a contract. However, consider the contractor who is paid a day rate for however long a job takes to complete; he may still be self-employed.	Yes. An employee can expect regular payment, but all or part of his salary may be comprised of commission or incentive payments.
Does the worker enjoy the benefits usually associated with employment; such as sick pay, invite to the Christmas party and membership of the pension scheme?	No. Although care must be taken where a contract worker receives higher pay than employed counterparts to compensate for the benefits he is not provided.	Yes. Provision of benefits is an indicator of employment.
The worker is an office holder (e.g. a director or company secretary)	No. Remuneration from an office is treated as earnings from employment.	Yes.

Significance of employment status

Once it has been determined, what is the significance of an individual's employment status and why does it matter?

The tax treatment differs between employed and self employed workers. An employee's tax and national insurance liability on earnings will be deducted at source through the PAYE system, whereas a self employed worker will be required to complete a self assessment tax return and settle his liability through the self assessment system.

It is the employer's duty to determine the status of their workers and if they get it wrong, they are likely to suffer

the tax consequences. They will become liable for income tax and national insurance that should have been deducted under PAYE plus interest and penalties.

In addition, the rules for the deduction of expenses differ between employees and the self employed; a self employed worker may be required to register for VAT and an employee will have the benefit of certain legal rights, including redress for unfair dismissal and redundancy.

Getting employment status wrong can be a costly mistake. It is best practice to have a written agreement in place and if in any doubt, take advice.

The above provides a brief summary of the major factors to be taken into account regarding employment status. This should not be relied upon without taking further advice. Please get in touch with our team if you would like to discuss this in greater depth.

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