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Employment status

Your employment status will help define what rights and responsibilities you have at work. Find out the basic employment rights for each employment status.

Main types of employment status

The three main types of employment status are:

- worker
- employee
- self-employed

The definition of 'employee' and 'worker' differs slightly from one area of legislation to another, but generally if rights apply to a 'worker' they also apply to an 'employee'.

Employee

The majority of people in work are employees. You're classed as an employee if you're working under a contract of employment (a contract of service). A contract need not be in writing - it exists when you and your employer agree terms and conditions of employment.

Rights of employees

As an employee, your employer is obliged by law to take off Income Tax and National Insurance contributions from your salary or wages before paying them to you. You're also entitled to all minimum legal employment rights including:

- statutory sick pay
- maternity, adoption and paternity leave and pay
- the right not to be unfairly dismissed
- statutory redundancy pay
- all the rights that are given to 'workers' (below)

Some of these rights require a minimum length of continuous employment before an employee qualifies for them. An employment contract may state how long this qualification period is.

Worker

A worker is any individual who works for an employer, whether under a contract of employment, or any other contract where an individual undertakes to do personally any work or services. Workers are entitled to core employment rights and protections. The following groups of people are likely to be workers but not employees:

- most agency workers
- short term casual workers
- some freelancers

Rights of workers

Providing any other qualifying conditions are met, all workers have rights:

- to the National Minimum Wage
- to rest breaks, paid holiday and limits on night work
- to protection against unauthorised deductions from pay
- to maternity, paternity and adoption pay (but not leave)
- to protection against less favourable treatment if you make a disclosure in the public interest (often called 'whistleblowing')
- not to be discriminated against unlawfully

Self-employed

If you're self-employed, you do not have a contract of employment with an employer. You're more likely to be contracted to provide services (a contract for services) over a certain period of time for a fee and be in business in your own right. You'll also pay your own tax and National Insurance Contributions.

You don't have employment rights as such if you're self-employed as you are your own boss and can therefore decide how much to charge for your work and how much holiday to give yourself.

You do have some legal protection. You must not be discriminated against and you're entitled to a safe and healthy working environment on your client's premises. Self-employed women who have recently left their jobs may be entitled to Maternity Allowance. It is possible, in some limited cases, to be self-employed for tax purposes but classified as a 'worker' or an 'employee' for employment rights purposes.

Work out your employment status for employment rights

There is no one thing that completely determines your employment status. If there is a dispute about your status between you and the person or company for whom you work, an Employment Tribunal will make its decision based on all the circumstances of a case.

The Tribunal's decision will depend on four main categories:

- a) control
- b) integration
- c) mutuality of obligations
- d) economic reality

Below are some questions to help explain what the categories mean. Try thinking about it as a sliding scale with 'employee' at one end and 'genuinely self-employed' at the other. The more questions you answer 'yes' to, the more likely it is that you are self-employed. If you answer 'no' to most of the questions then you are likely to be an employee.

If you answer yes to some of the questions, in particular 'you can decide when you will work' and 'can turn down work when offered', 'your employer offers work only as it becomes available' and 'you are not in business on your own account', you are likely to be considered a 'worker' rather than 'employee'.

This is guidance only and a definitive answer can only be given by an Employment Tribunal or court. You should get advice from an expert if you are unsure.

a) Control

Control is the extent to which the employer decides what tasks you do and how you do them:

- do you have the final say in how the business is run?
- can you choose whether to do the work yourself, or send someone else?
- can you choose when and how you will work?

b) Integration

Integration is the extent to which you're part of the organisation:

- if you need help, are you responsible for hiring other people and setting their terms of employment?
- are you excluded from internal company matters such as corporate training and staff meetings?
- are you free from having action taken against you using the company disciplinary procedure?
- are you excluded from company benefits and pension schemes?

c) Mutuality of obligations

Mutuality of obligations means the extent to which your employer is required to offer you work and whether you're expected to do it:

- does your employer offer work only if and when it is available?
- can you decide when you will work and can you turn down work when offered?

d) Economic reality

Economic reality refers to the extent to which you bear the financial risk:

- are you responsible for meeting the losses as well as taking the profits?
- are you responsible for correcting unsatisfactory work at your own expense?
- do you have to send an invoice to the company for your pay?
- do you get a fixed payment for a job (including materials and labour)?
- do you provide the main items of equipment needed to do the job?
- do you work for a range of different employers?

Further Help

If you are looking at this and are still confused as to what status some or all of the people who work in your business occupy contact Expert HR Solutions at chris@experthrsolutions.co.uk or call 01202 61133 where expert advice is available. Don't forget if anyone needs a contract of employment it must be given to them within **EIGHT** weeks of commencing employment, Expert HR Solutions Ltd. can write these for you.