



19/08/2021 – Employment Status - Employed or Self-employed?

There is currently a lot of scrutiny from HMRC around employment status, and whether employers are using the correct status for their workers.

There are three categories of worker status, which affects rights whilst at work, as well as tax status:

- Worker
- Employee
- Self employed

Employment status for employment rights is not necessarily the same as employment status for tax purposes.

Worker

- the work for the organisation is more casual, for example not regular
- the individual is employed to do the work themselves
- the individual is not offered regular or guaranteed hours by the employer
- The individual does not have an obligation to make themselves available for work, but should do work they have agreed to do

A 'worker' has employment rights such as

- written terms (a 'written statement of employment particulars') outlining job rights and responsibilities
- National Minimum Wage
- paid holiday
- payslips
- protection for 'whistleblowing'
- protection against unlawful discrimination
- not being treated unfairly if for working part time

Employee

Individuals are more likely to be classed as an employee if:

- the employer is in charge of the workload and how the work should be done
- the individual is required to work regularly, unless on leave
- there is an expectation for the work to be consistently available
- the individual cannot refuse to do the work
- the individual is employed to do the work themselves

Employees have all the employment rights that workers do, as well as extra rights and responsibilities, including:

- Statutory Pay and Leave (parental, Shared Parental, maternity, paternity, adoption, parental bereavement)
- time off for dependants
- time off for public duties
- redundancy pay after 2 years' continuous service
- being able to claim unfair dismissal after 2 years' continuous service
- getting the minimum notice period if dismissed or made redundant
- the right to flexible working requests after 26 weeks' continuous service
- protection against dismissal or suffering any detriment if taking action over a health and safety issue

Self Employed (Independent Contractors)

An individual is more likely to be classed as self-employed if they:

- are responsible for how and when they work
- are the owner of a company or are a freelancer
- invoice for work done pay instead of getting a wage
- get contracts to provide services for clients
- are able to send someone else to do the work for them, if appropriate
- are able to work for different clients and charge different fees

If an individual is self-employed, they have some employment rights including:

- protection for your health and safety on a client's premises
- protection against discrimination

Self-employed individuals do not have the same employment rights and responsibilities as employees or workers.

Tax Implications

The self-employed must pay their own tax and national insurance. Businesses must deduct tax and national insurance, and pay employer's national insurance, for both workers and employees.

Assessing Worker Status

It is important for businesses to accurately assess the status of all their workers.

An individual is not necessarily self-employed if they offer to carry out some work for you and say they are self-employed, and that they will give you an invoice for the work done. If you treat them as being self-employed, but HMRC later rule that they should have been on the payroll for example, the business may be liable for all the tax and national insurance that should have been applicable for the employee, plus fines, plus interest.

Use the HMRC Check Employment Status for Tax (CEST) tool (link below). HMRC will stand by any results of this tool, as long as the questions are answered accurately (it is advisable to keep a copy of questions and answers for your records).

Further information

Follow this link for the CEST tool:

[Check employment status for tax - GOV.UK \(www.gov.uk\)](https://www.gov.uk/check-employment-status-for-tax)

Call HMRC to check if you or someone else is classed as employed or self-employed on **0300 123 2326** (Mon to Fri 8.30am to 4.30pm)