

EMPLOYMENT STATUS

Guidance Note

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Employment Status has become a hot topic due to recent media coverage meaning that the general population is more aware of their individual rights and may be more likely to question their own employment status.

An individual can either be consider an *employee*, a *worker*, or as *self-employed*.

Therefore, it is important that Employers are aware of their obligation to correctly identify an individual's employment status when engaging with them. If the employment status is incorrectly identified, then the employment rights the individual is entitled to will likely not be met.

For tax purposes HMRC may only look at whether someone is registered as a self-employed person in order to classify them within this category, but Employment Law takes a more in depth approach.

There are three main aspects which an Employment Tribunal would consider when assessing an individual's employment status:

1. Control

What level of control does the employer have? For example, is the individual told when and where and how to work? Are they provided with training and equipment? Would the individual be reprimanded if they did not comply?

2. Personal Service

Can the individual send someone else to do the work, or are they required to complete the job personally?

3. Mutuality of Obligation

This refers to the obligation for the employer to provide work and pay for it, and the Individual's obligation to complete this work.

For example, in a relationship between an employee and their employer it would likely be expected for there to be high levels of control about how the duties of the role ought to be completed, the employee must complete the work personally and there would be a high mutuality of obligation as the employee is expected to accept work given for an agreed payment.

Whereas contrastingly, the relationship with a truly self-employed individual would involve very little control, or no control whatsoever, in regards to how the job is carried out. The individual is there to provide a service only and they can chose how this service will be provided. There would be an absolute right to substitute a reasonable alternative and there would be no mutuality of obligation, as long the service is provided then this is what was agreed and the individual will charge what they believe to be a

The third option for employment status is a Worker. This is where some elements above are present, but not all. Workers have a reduced number of rights, but do not have all the statutory rights associated with being classed as an employee.

Additionally, a major factor that Employment Tribunals will take into account is how the individuals are treated in practice. Therefore, it is not enough to have only the correct documentation in place, employers must consider the full picture.

GET IN TOUCH

If you have any questions, or would like further support, please get in touch with Georgia Wilson by calling 0141 221 2984 or by email at georgia.wilson@aab.uk.

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The risks in saying that someone is self-employed incorrectly can be substantial. Both workers and employees can raise unlawful deductions from wages claims for holiday and sick pay owed and an Employment Tribunal can back date such payments for up to 2 years. Additionally, employees will also be able to make claims of constructive and unfair dismissal if they have over 2 years' of service.

Case Law: Uber BV and others v Aslam and others [2019]

Recent high profile cases have included well known company, Uber. It was found that their drivers ought to be classed as Workers, instead of being considered Self-Employed as the company unsuccessfully argued at Employment Tribunal. This mean that these individuals ought to have been entitled to holiday pay and sick pay which they had not received and these underpayments were then classed as unlawful deductions. This ruling has had widespread ramifications, affecting numerous businesses operating in a similar fashion.

If you have any concerns in regards to the employment status of any individuals that you are working with, then please do not hesitate to get in touch.

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