

## Determining an Employee's Status

As soon as an organisation or individual takes on paid employees then they must register a Pay as You Earn (PAYE) scheme with the Inland Revenue, dealt with under RTI (Real Time Information). One of the most important aspects of the operation of PAYE is determining whether workers are employed or self-employed. The determination of whether a worker is employed or self-employed will have a fundamental bearing on the way payments are made to them, and also affect their entitlements to employment rights.

Any mistakes in incorrectly classifying someone as self-employed, innocently or otherwise, can result in the employer being held liable for the tax and national insurance that should have been deducted, plus potential penalties and interest.

The decision as to whether a worker is an employee or self-employed is usually made when the worker begins work, and in most cases it will be self-evident from the contract (written or verbal) what their status is. The essential characteristic of employment is a contract of service, and that of a self-employed worker is a contract for services.

A contract of employment must contain an obligation on the part of the employee to provide their services personally, without such an obligation the contract is not one of service. The terms of the contract are not conclusive in determining status, and some or all of the following factors are likely to indicate a contract for services, and therefore indicate self-employment:

- (a) A right of substitution of personnel;
- (b) A minimum element of control and supervision;
- (c) A statement that the contract is a contract for services;
- (d) Reference to the use of the worker's own tools and equipment;
- (e) Flexibility regarding working hours;
- (f) Flexibility regarding place of work;
- (g) Evidence that the contract is for the purpose of completion of a specified job or task;
- (h) The worker's right to decline to perform certain work;
- (i) A statement that the worker will be responsible for his own tax, national insurance contributions and VAT;
- (j) Submission of a fee on a printed invoice, and explanation of the basis of charge;
- (k) A clause to the effect that public liability, professional indemnity and product liability insurance will be taken out, where relevant, by the worker;

Conversely, some or all of the following indicate a contract of service, and suggest that the worker is an employee:

- (a) A named individual or individuals to be engaged;
- (b) Standard employment terms such as notice, pay, salary, dismissal, disciplinary rules, holiday and sickness pay, redundancy and pensions;
- (c) Reference to working hours expressed in terms of hours per day, week or month;
- (d) The term of the contract related to a fixed period of time;
- (e) An obligation of the worker to perform the tasks personally;
- (f) A request for the worker to wear the company uniform or adhere to a dress code;
- (g) Completion of timesheets, except for the purpose of overall costing of the main contractor's work;
- (h) Attendance at a specific location for a fixed period of hours;

It cannot be stressed too strongly that each case or situation has to be judged on its own individual circumstances and merits, and there is no formulaic approach available to determine whether a worker is employed or self-employed.

Where arts organisations have permanent members of orchestras, opera, ballet or theatre companies then PAYE will apply to those earnings. The Inland Revenue considers that certain workers in the Film and allied industries, such as studio hands should have their earnings assessed under PAYE. They have accepted that a number of people employed in that industry are self-employed, and published [guidance notes](#) as to who they consider self-employed.

The Revenue has mounted an increasing challenge to self-employment, as evidenced by a growing body of case law. Compliance is an ever-increasing watchword that employers, the unpaid tax collectors need to be aware of.