

The Status Test: What is a Worker's Status?

When arts organisations take on workers an essential first question is to determine whether these workers are employed or self-employed, this is called a 'status test'. The status test will have a fundamental bearing on the way payments are made to workers.

Payments to the self-employed can be made gross, whereas payments to employees have to be made under the rules of Pay As You Earn (PAYE). A worker's contention that they are self-employed is not sufficient to discharge an employer's responsibility; a 'status' check must be carried out.

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 over the years a number of factors have evolved as indicative of contract for services, and therefore a pointer to self-employment.

Some of these factors include a right of substitution of personnel; the worker using their own money and taking financial risks; flexibility regarding working hours and place of work; the worker's right to decline to perform certain work; a statement that the worker will be responsible for their own tax affairs; the worker being responsible for rectifying work in their own time and at their own expense.

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.

Actors, ballet dancers, opera singers, musicians and other performers/artists who appear live in the theatre, opera, ballet, or in clubs, or perform in film, video, radio or television productions may be engaged under either contracts for services or contracts of employment.

Where theatrical performers/artists have independence from a particular regular paymaster this may indicate that individual contracts are not contracts of employment, even though the initial view based on the particular terms of the particular engagement may suggest otherwise.

Accordingly, assessment of a performer's/artist's earnings as self-employed will normally be appropriate. The sort of engagement where PAYE may be appropriate, is more likely to be in circumstances where a performer/artist is engaged:

- For a regular salary to perform in a series of different productions over a period of time,
- In such roles as may be from time to time stipulated by the engager, with a minimum period of notice before termination of the contract, This would apply for example to permanent members of some orchestras and permanent members of an opera, ballet or theatre company.

A designer, director or choreographer may be accepted as self-employed where they are engaged for a specific production that is for a limited period and they are paid a fee and a royalty, alternatively they may be engaged as employees.

The cost to an organisation of getting it wrong will usually result in them being held liable for the tax and national insurance that should have been deducted, plus potential penalties and interest – the penalties can be as much as 100% of the tax and NIC underpaid, extended to previous years.

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 arts organisations, the unpaid tax collectors need to be fully aware of.

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