

Are your workers employees?

Employee status continues to be in the spotlight. The Government are consulting on proposals to address non-compliance with the off-payroll working rules in the private sector. Earlier in the year they consulted on employment status, including the possibility of introducing a statutory employment status test.

It is important that the status of workers is correctly assessed as this will affect the tax and National Insurance that the worker pays, and consequently the state benefits to which they may be entitled, and also the extent to which they are able to benefit from employment rights. It will also determine whether the engager must operate PAYE and pay employer's National Insurance contributions.

Current approach

While change is likely, under the current rules there is no single test that determines whether a worker is an employee or is self-employed. Rather it is a case of looking at the characteristics of the engagement and standing back and seeing whether the picture that emerges is one of employment or self-employment.

Employee v self-employed

An employee works under a contract of service whereas a self-employed person enters into a contract for service.

The following table summarises some of the key indicators of employment and self-employment.

Employment	Self-employment
The employer is obliged to provide work and the worker is obliged to do it.	The worker is in business on their own account.
The worker must work regularly unless on leave.	The worker bears the financial risk.
The worker is required to work a minimum number of hours at set times.	The worker is generally paid a price for the job, regardless of how long it takes.
The worker must do the job personally.	The worker does not have to do the work personally and can send a substitute.
The worker is supervised and told what work to do.	The worker can decide when and how to do the job.
The worker is entitled to paid holiday.	The worker does not get paid while on holiday.
The worker is entitled to join the workplace pension scheme.	The worker decides what jobs to take on.
The worker receives employment-type benefits.	The worker is responsible for correcting unsatisfactory work and must bear the cost of doing so.
The worker is given the tools and equipment needed to do the job.	The worker provides the tools and equipment needed to do the job.
The employer deducts PAYE and National Insurance contributions from the employee's pay.	The worker invoices for their work and is paid gross, without the deduction of tax and National Insurance.
The worker is 'part and parcel' of the organisation.	The worker is responsible for the financial success of the business.
The worker is included in company social events, such as the staff Christmas party.	The worker is not part of the organisation and is not invited to social events.

Marginal cases

It will often be clear cut as to whether a worker is employed or self-employed and the characteristics of the engagement will fall securely into one camp or the other. However, this will not always be the case; in marginal cases, the worker may exhibit characteristics of each. In such case, HMRC produce a 'Check Employment Status Tool' (CEST), which can be used to help reach a decision as to whether the worker is an employee or self-employed.