

# EMPLOYMENT STATUS

## 4 TYPES OF EMPLOYMENT

There are essentially four type of employees, all of which have different and have differing legal rights:

1. Employees
2. Employee shareholder
3. A worker
4. A self employed person

### 1. EMPLOYEES

An employee is employed under a 'contract of employment', this would also include a contract of apprenticeship. Legally a contract of employment can exist without a written document, as all terms can be implied and typically will be a verbal agreement of responsibilities and practices between employer and employee.

Employees benefit from the full protection of employment law, some employment rights will require the employee to have continuous employment in order to qualify for them. For example; the right to claim unfair dismissal and a statutory redundancy payment normally require two years' continuous employment.

The employment law rights of an employee include the right to:

- Be issued with written particulars of employment
- Not be unfairly dismissed
- Receive statutory redundancy pay on redundancy
- Receive notice of termination of employment
- Receive guarantee payments in respect of lay-off and short-time working
- Receive itemised pay statements
- Be paid statutory sick pay
- Take maternity, paternity, adoption and/or shared parental leave and be paid statutory maternity, paternity, adoption and/or shared parental pay (as appropriate)
- Take parental leave and time off for family emergencies
- Request flexible working arrangements
- Not receive less favourable treatment on account of working under a fixed-term contract
- Have protection of their employment upon the transfer of a business

## 2. EMPLOYEE SHAREHOLDERS

Employee Shareholders also are employed under a contract of employment, same as employees. This means they too get employment rights and laws that an employee gets, however they an employee shareholder does not have the right to:

- Claim unfair dismissal (apart from automatically unfair dismissals, health and safety dismissals or dismissals amounting to unlawful discrimination in breach of the Equality Act 2010)
- Receive statutory redundancy pay on redundancy
- Request flexible working arrangements (except if made within fourteen days beginning with the day on which the employee shareholder returns to work from a period of parental leave)
- Make an application for time off to undertake study or training

Additionally, employee shareholders are required to provide sixteen weeks' notice of an early date of return from maternity leave or adoption leave instead of the usual eight weeks. It is also sixteen weeks notice for paternity leave, which is usually six weeks notice.

## 3. WORKERS

Every employee will be a worker, however not every worker will be an employee. A worker will work under a contract of employment but also will work under a contract whereby they undertake to perform personally any work or services for the other party to the contract.

A worker has fewer obligations to an employer than an employee does, but they still do provide services under a contract to the employer.

Workers also get specific rights from the employment law rights, these include:

- Receive paid annual leave
- Limit working time to a maximum number of hours per week
- Have rest breaks
- Be paid the national minimum wage
- Not to have unlawful deductions made from wages
- Not receive less favourable treatment on account of working part-time
- Be protected from discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including colour, nationality and ethnic or national origins), religion or belief, sex or sexual orientation
- Receive equal pay and conditions for equal work

## 4. SELF-EMPLOYED PERSONS

Typically Self-Employed contractors or consultants work under 'contracts for services'. Self-Employed persons are independent to the employer's business and have a business of their own account.

Self-Employed persons are not employees, although some self-employed persons may be workers. A person is not automatically classed as self-employed in employment terms just because an employer issues an individual with a document entitled 'contract for services', 'self-employed contract' or 'consultancy agreement'.

It is based on the relationship between the individual and the employer rather than the label of the document, this relationship can be deciphered in employment tribunals if confirmation is needed.

## OFFICE HOLDERS AND RIGHTS DERIVING FROM EUROPE

The rights and duties of an office are defined by that office, and it exists independently of the person who fills it. Examples of office holders are judges, clergy and non-executive directors.

These people usually do roles that exist independently and are not defined by their appointment to it. They also may not be subordinate to their employer as required by the employment relationship.

Being an office holder does not mean it can't also be an employment relationship. To see whether the office holder is in an employment relationship, you have to consider the parameters described above.

How someone's engagement is defined may be different from person to person, it may be different depending on:

- Laws originating in UK legislation, such as unfair dismissal or whistleblowing which are defined in the Employment Rights Act 1996 (ERA)
- Law originating in Europe, such as working time under the Working Time Regulations 1998, which put into effect the European Council directive on the same matter

The UK and Europe differ on their definition of employment and whether an individual requires a contract or not. Europe does not require a contract as defined by the relevant member state and the UK does.

The difference manifests itself in relation to judicial office holders.

## THE PRACTICAL DEFINITION

The Employment Tribunal will decide what type of employment an individual is on and they will take into account the range of factors outlined above, amongst others factors as well.

Initially the Employment Tribunal will see whether the employer is obliged to provide work for the employee (or pay them for work provided) and then if the employee is obliged to personally perform a reasonable amount of work. Then the tribunal will see if the worker expressly or impliedly is under the control of the employer.

There must be mutual obligations and a sufficient degree of control in place before the Employment Tribunal will look further at the relationship.

## SPECIFIC RELATIONSHIPS

The table below helps distinguish between employee and self-employed:

Factor	Employee	Self-Employed
Is the worker contracted to provide the work personally?	Yes	No, may send a substitute worker in their place.
Does the worker work exclusively for the other party?	Yes	No
Does the worker work as part of the other's business?	Yes - integral part of employers business, working in the core of the business	No, the person works when required.
Does the worker provide their own equipment?	Employer provides all that is required.	Often provides their own.
Does the worker provide their own support staff?	Employer provides all required support.	Will provide their own support staff and will pay them from their own business.
Is the worker responsible for own profit and loss?	Can not increase profits over their received wage.	Able to enhance profit.Puts errors right at their own cost.
Tax, NI and VAT arrangements.	Dealt with by employer. Subject to PAYE rules	Provides their own accounts and is paid on invoice.
Is the arrangement designed purely to achieve tax advantages and/or to avoid employment legislation?	If yes, the worker will be regarded as an employee as it is likely the arrangement will fail.	N/A

Does the worker receive paid holidays, sick pay and/or a company pension scheme and do they receive regular wages?	Yes (and paid annual leave)	No
Is the worker subject to disciplinary action in the event of misconduct or poor work performance?	Yes	No

More specific relationships include:

- Directors
- Partners
- Home workers
- Temporary workers supplied by an agency
- Individuals who are labeled as self-employed contractors, working within the “gig economy”

## DIRECTORS

According to law, directors are office holders (explained in above sections). Sometimes the role and responsibilities of a director, for example turn up at a particular time and perform particular tasks, are similar to the role and responsibilities of an employee, therefore blurs the lines between the two different types of employment.

Most of the time where a director is not an employee it involves small private businesses, usually family run. As the director of the company may work full-time whilst not being an employee. The main difference is because the obligations of a small private company are very different to the obligations of a director in a large national organisation.

## PARTNERS

It is dependent on what type of partner the individual is, the two types of partner in question is an equity partner and a salaried partner. An equity partner owns part of the company and thus takes a share of the profits, this person will be self-employed. A salaried partner does not own part of the business but receives payment from a salary only. This person is most likely to fall under the category of an employee.

## **HOME WORKERS**

As this type of worker works in their own home away from the work premises, the tribunal will look at the true relationship between worker and employer.

## **TEMPORARY WORKERS SUPPLIED BY AN AGENCY**

Most agency workers are involved in two contracts, their contract with the agency and then their contract with the employer they are doing work for. In some circumstances the agency pays the worker directly for doing the work for the employer they are doing work for.

In most cases the agency agrees to be the employer, therefore the worker will not have an employment relationship with either the agency or the business the worker is 'working' for. Workers will generally not have a contract of employment with the agency, as to avoid employment status.

The variation in contracts creates a unique scenario where the tribunal will make an independent decision based on the table above's factors and make a decision on the employment type.

## **INDIVIDUALS WHO ARE LABELLED AS SELF-EMPLOYED CONTRACTORS, WORKING WITHIN THE "GIG ECONOMY"**

The dictionary definition of the "gig economy" is of a labour market characterised by the prevalence of short-term contracts or freelance work, as opposed to permanent jobs.

The issue with 'gig work' is that a person's employment type is considered to be under the "self-employed" category, however tribunal review can lead to the individual's work to be deemed as "workers".

Case law has established that, for example, the right to provide a substitute to carry out the work only when the contractor is unable to carry out the work themselves will, subject to any exceptional facts, indicate a requirement for personal performance and would point to the individual having worker or employee status.

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