

Information needed to establish employment status

The following factors indicate that an individual may either be an employee or self-employed. Individuals not meeting the higher benchmark of being an “employee” may still have “worker” status. Workers are entitled to fewer statutory rights than employees, but do have some key legal rights, including paid holiday, protection from discrimination, entitlement to the national minimum wage and protection against unlawful deduction from wages.

In determining employment status the courts, tribunals and HM Revenue & Customs (HMRC) will look at all aspects of the arrangement and no single test will be conclusive in all cases. In addition, tribunals and HMRC may have different approaches to this test.

Factors indicating employment status

Mutual obligations

The company is under an obligation to provide the individual with regular work and the individual is under an obligation to make themselves available to do the work.

Personal service

The individual is required to provide their services personally. Either there is no right to appoint a substitute or any right of appointment is subject to the company's approval and may only be used in certain situations (usually where the individual is unable, rather than unwilling, to work).

Control

The individual is under the control of the company to such a degree as to make the company their "master". In other words, the company controls what the individual does, how they do it and when they do it. However, those holding senior, professional or skilled positions may retain significant control over how they carry out their work but still be employees. The individual is also expected to conform to standards of, for example, behaviour or dress expected of others within the same working environment.

Exclusivity

The individual is not normally free to work for other organisations without the express permission of the company. The individual may be subject to restrictive covenants in their contract.

Nature and length of the engagement

The length of the engagement is not determined (with the exception of fixed-term contracts) and does not relate to the performance of a specific task.

Pay and benefits

The individual is paid a fixed amount on a regular payment date irrespective of performance targets or completion of a specific task (however, note that shift workers or commission workers may be employees). They may receive a pension, bonus, private medical insurance, company car or other benefit and be entitled to company sick pay.

Integration

The individual is integrated into the company. For example, they perform services which are similar to or substantially the same as those performed by an employee, their name appears on the internal telephone directory, they have a company e-mail address, they wear a uniform and they have a company business card.

Facilities and equipment

The company provides the individual with the facilities and equipment required by them to carry out their job.

Financial risk

The individual is paid even if there is not sufficient work to keep them fully occupied. The individual assumes no financial risk in working for the company.

Taxation

The individual is not responsible for payment of income tax and national insurance contributions (NICs) on their earnings.

Factors indicating self-employed status**Mutual obligations**

The company is not obliged to offer work on a regular or frequent basis and the individual has no obligation to accept any work that is offered.

Control

The individual has the ability to determine when and how they work and is not under the direct supervision of the company.

Personal service

The individual is not required to carry out the services personally and has an unqualified right to appoint a substitute.

Exclusivity

The individual is free to provide their services to whomever they choose without operating exclusively for one organisation.

Nature and length of the engagement

The individual is engaged for a finite period to carry out a specific task or project.

Pay and benefits

The individual is paid on completion of a specific task or project or on a commission-only basis. They are not entitled to participate in any benefit schemes and will not normally be paid overtime.

Integration

The individual is not sufficiently integrated within the company to have a defined role and does not perform services similar to or substantially the same as those performed by an employee.

Facilities and equipment

The individual provides their own equipment and materials in order to perform the services.

Financial risk

The individual risks their own capital in the business and will be personally responsible for any losses arising from their work. They may be required to correct any unsatisfactory work in their own time and at their own expense. Conversely, they may have the opportunity to profit from the success of the project.

Taxation

The individual is responsible for payment of their own income tax and NICs on their earnings and is responsible for registering for VAT if the level of their supplies exceeds the relevant registration limit.