

## Briefing Note: Employment Status

### An Introduction to the Briefing Note

This Briefing Note explains the significance of the distinction between an employee, a worker and a self-employed contractor. It also sets out the factors that will be considered by an employment tribunal when deciding whether an individual is an employee or self-employed. This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

**Briefing Note**  
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### Employee status

An employee is an individual who has entered into or works (or worked) under the terms of a contract of employment. The contract can be expressly agreed (in writing or orally) or implied by the nature of the relationship. To have employee status:

- An individual must be obliged to do the work personally (rather than being able to send a substitute).
- There must be a “mutuality of obligations”, that is, the employer needs to be obliged to provide the work and the employee is obliged to accept the work.
- The employer needs to have some control over the way the employee carries out the work.

### Worker status

Worker status is sometimes seen as a “half-way house” between employee and self-employed status. Workers are entitled to fewer statutory rights than employees, but do have some key legal rights, including:

- Paid holiday.
- Protection against unlawful deduction from wages.
- The national minimum wage.

### Self-employed status

The self-employed possess no statutory employment rights (although they may be protected by discrimination law).

### University sponsorship contracts

- It is not uncommon for a business to sponsor students to advance their training, particularly where there is an expectation (or commitment) that the student will work for the company at the end of the course.
- These type of arrangements are unlikely to be considered to be contracts of employment if the primary purpose of the arrangement is training and education. Any references in the sponsorship contract to employment will not give a student employment status, if training is the overall objective.

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### What is the significance of the distinction?

The distinction between the three categories is significant for a number of reasons, including:

- Legal protections. Some core legal protections only apply to employees, for example the right:
  - not to be unfairly dismissed; and
  - to receive a statutory redundancy payment.
- **Health and safety.** Employers owe employees statutory health and safety protection. Self-employed contractors may not be covered under these duties, although they will be covered under an employer's occupier's liability.
- **Tax.** An employer is responsible for deducting tax and national insurance from the salary paid to employees at source (PAYE). Self-employed individuals are responsible for paying their own tax and national insurance under self-assessment.
- **TUPE transfers.** Only employees will be automatically transferred to any purchaser of the employer's business under a TUPE transfer.
- **Insurance.** An employer must take out employer's liability insurance to cover the risk of employees injuring themselves at work. Self-employed contractors are unlikely to be covered by this type of insurance.
- **Liability.** An employer is liable for acts done by an employee in the course of their employment. This type of liability is unlikely to extend to self-employed contractors.

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## What information is needed to establish employment status?

The table below sets out the factors that may indicate employment or self-employed status. However, the employment tribunal and courts will determine each case on its particular facts.

Factor	Factors indicating employee status	Factors indicating self-employed status
<b>Mutual obligations</b>	The company is under an obligation to provide the individual with regular work. The individual is under an obligation to make themselves available to do the work.	The company is not obliged to offer work on a regular or frequent basis. The individual has no obligation to accept any work that is offered.
<b>Personal service</b>	The individual must provide their services personally. Either: <ul style="list-style-type: none"> <li>• There is no right to appoint a substitute.</li> <li>• Any right of appointment is subject to the company's approval.</li> </ul>	The individual is not required to carry out the services personally and has a right to appoint a substitute.
<b>Control</b>	The company controls what the individual does, how they do it and when they do it.	The individual has the ability to determine when and how they work and is not under direct supervision by the company.
<b>Integration</b>	The individual is integrated into the company (for example, they have a company e-mail address or a company business card).	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.
<b>Pay and benefits</b>	The individual is paid a fixed amount on a regular payment date, irrespective of performance targets or the completion of a specific task.	The individual is paid on completion of a specific task or project, or on a commission-only basis.

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<b>Exclusivity</b>	The individual is not normally free to work for other organisations without the permission of the company.	The individual is free to provide their services to whomever they choose without operating exclusively for one organisation.
<b>Facilities and equipment</b>	The company provides the individual with the facilities and equipment required by them to carry out their job.	The individual provides their own equipment and materials to perform the services.
<b>Financial risk</b>	The individual is paid, even if there is insufficient work to keep them fully occupied.	The individual risks their own capital in the business and will be personally responsible for any losses arising from the work.
<b>Taxation</b>	The individual is not responsible for payment of income tax and national insurance contributions (NICs) on their earnings.	The individual is responsible for payment of their income tax and NICs on their earnings. The individual is also responsible for registering for VAT if the level of their supplies exceeds the relevant registration limit.
<b>Nature and length of the engagement</b>	The length of engagement is not determined (with the exception of fixed-term contracts) and does not relate to performance of a specific task.	The individual is engaged for a finite period to carry out a specific task or project.

### Legal status of volunteers

The legal status of volunteers is not clear cut, as there is a vast range of different types of relationships, from the purely voluntary to those that are clearly contractual and those in between, which are difficult to define. This ambiguity makes it difficult for organisations taking on volunteers to appreciate any legal obligations that they may owe them.

### Practical tips for reducing the risk of a legally binding contract

Organisations can reduce the risk of creating a legally binding contract with volunteers by:

- Avoiding making payments to volunteers that could be construed as wages. Payments to cover actual expenses should be clearly identified as such and ideally reimbursed against receipts.
- Removing, or at least minimising, any perks that could be regarded as remuneration.

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- Reducing obligations on the part of the volunteer (for example, give the volunteer the ability to refuse tasks and choose when to work).
- Avoiding using language that makes the arrangement sound contractual and adopting flexible language, such as 'usual' and 'suggested'.
- Treating volunteers fairly. Having clear procedures for dealing with problems and grievances should help reduce the likelihood of disputes with volunteers.

If you would like to know more about this topic or our other legal services, please contact Paul Maynard [pcm@gabyhardwicke.co.uk](mailto:pcm@gabyhardwicke.co.uk)

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