

Employment Status

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Employee versus Worker

In employment law a person's employment status helps determine:

- Their rights and responsibilities
- Their employer's responsibilities

There are three principal categories of employment status:

- **Employees** working under a contract of employment, who have full employment rights.
- **Workers**, who have a contract or other arrangement to do work or services personally for a reward, and who are not self-employed.
- The genuinely **self-employed**, who are independent contractors, run their business for themselves and take responsibility for its success or failure.

There are also other types of status such as directors, office holders and volunteers.

This guide will concentrate solely on employees and workers.

Generally employment status issues occur when there is a dispute between an organisation and an individual working for it. Modern working practices such as zero-hours contracts and the supply of labour via digital platforms are bringing employment status under increasing scrutiny. Growth in the gig economy where payment is per job, and workers lack of guaranteed hours and job security, has led to a stream of tribunal cases.

Legal definitions:

For individuals whose work predominantly takes place in Northern Ireland, the legal definition of an employee, a contract of employment and a worker can be found in Article 3 of the Employment Rights (Northern Ireland) Order 1996.

Determining Employment Status:

Only a court or industrial tribunal can make a final decision on employment status for employment rights purposes. They will do this by looking at how the employment relationship between an employer and individual works in practice. HM Revenue and Customs (HMRC) may separately argue that someone is self-employed for tax purposes. This may be confirmed by the tax tribunal and the courts. An industrial tribunal or court may still make a decision that someone is a worker or employee for employment rights purposes.

The industrial tribunal's decision will depend on four main categories:

- **Control** - whether an employer can instruct an individual on how and which tasks to perform.
- **Integration** - whether an individual is an integral part of the organisation.
- **Mutuality of obligations** - whether the individual is obliged to carry out the work offered, and whether the employer is obliged to offer work to them.
- **Economic reality** - whether the individual is in business on their own account, eg where they bear the financial risks of failure to deliver the service or can profit from their own sound management of the task.

In order to determine employment status, a number of questions need to be addressed, such as:

- Is there a contract of employment in existence between an employer and an individual?
- What does the contract of employment state?
- Is the contract clear about the terms of agreement?
- Is what happens in practice different from what is stated in the contract?
- Is the employer obliged to provide work?
- Is the individual obliged to accept work?
- When is the obligation triggered?
- Have practices developed into a pattern over a period of time?
- Is the individual told what to do and how to do it?
- Does the individual determine what needs to be done and in what way?
- Can the individual appoint a substitute or must they provide the service personally?
- Is the individual obliged to follow/use the internal rules etc. of the organisation?
- Does the individual use their own equipment or wear a uniform?
- What are the individual's tax and National Insurance arrangements?
- Is the individual restricted in who else they can work for?
- Is the individual penalised, for example, not offered work for a time, for refusing to work?

The area of employment status is a complex subject and specialist legal advice should always be taken.

Basic Employment Rights at a Glance:

<u>Right/Protection</u>	<u>Employee</u>	<u>Worker</u>
Right to not be unfairly dismissed (after one year's service)	Yes	No
Right to receive written statement of particulars/terms and conditions	Yes	No
Itemised payslip	Yes	No
Statutory minimum notice	Yes	No
Statutory redundancy pay (after two years' service)	Yes	No
Protection against discrimination in the workplace	Yes	Yes
National Minimum Wage	Yes	Yes
Protection against unlawful deduction from wages	Yes	Yes
Paid annual leave	Yes	Yes
Right to daily and weekly rest breaks	Yes	Yes
Pension auto-enrolment	Yes	Yes
Right to be accompanied at a disciplinary or grievance hearing	Yes	Yes
Rights under data protection legislation	Yes	Yes
Whistle-blowing protection	Yes	Yes
Protection under anti-discrimination law	Yes	Yes
Statutory sick pay	Yes	Possibly
Guaranteed payments	Yes	No
Shared parental leave and pay (if qualifying criteria are met)	Yes	No
Unpaid time off to care for dependants	Yes	No
Right to request flexible working	Yes	No
Time off rights (in general)	Yes	No
Right not to suffer detriment in certain contexts	Yes	Possibly
Protection under TUPE legislation	Yes	No
Certain payments on insolvency	Yes	No
Health and safety in the workplace	Yes	Yes

You can access further information and guidance on employment status by contacting the Labour Relations Agency Workplace Information Service on 03300 555 300 or on the NI Business Info and NI Direct websites.