

Checking your employment status

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Checking your employment status and understanding it is essential, as it determines your legal rights, tax obligations, and benefits.

There are three primary employment status categories:

1. **employed**
2. **self-employed**
3. **workers**

In this article, [Patrick Simpson](#) focuses on the above employment status categories, including checking your employment status, the legal aspects of employment, and the differences between PAYE and invoicing.

What do the employment status categories mean?

Employed

An employed person works under an employment contract and receives a regular salary or wage. The employer deducts income tax and national insurance contributions from their salary. Some core legal protections only apply to employees, such as paid sick pay and rights on termination of employment granted under the [Employment Rights Act 1996](#), including the right not to be unfairly dismissed and the right to receive a statutory redundancy payment.

Self-employed

A self-employed person works for themselves and is responsible for paying their income tax and national insurance contributions. They are not entitled to the same employment rights as employed individuals, such as sick pay and paid holiday leave, and they can choose which jobs they take on and when and how they work.

Workers

A worker is somewhere between employed and self-employed. They work under a contract, but not necessarily a permanent one. Workers receive some employment rights, such as the right to the minimum wage, paid holiday and protection from discrimination, but only some of the rights that employees enjoy. Unlike employees, workers don't benefit from protection against unfair dismissal, a statutory minimum notice period or a statutory redundancy payment. A defining feature of a worker is that they must turn up for work even if they do not want to, whereas a self-employed person can decide when they work.

Checking your employment status

It's not always clear whether you're employed, self-employed or a worker. To determine your employment status, you need to consider the terms of your contract, the nature of your work, and your working arrangements. Here are some key factors to consider:

Control

You're more likely to be employed if you're told what to do and how to do it. If you have control over how you carry out your work, you're more likely to be self-employed.

Substitution

If you're required to do the work personally, you're more likely to be employed. If you can send someone else to do the work, you're more likely to be self-employed.

Mutuality of obligation

If you're offered work and are obliged to accept it, and the employer is obliged to provide it, you're more likely to be

employed. You're more likely to be self-employed if you can turn down work.

Equipment

If you're provided with equipment to do your work, you're more likely to be employed. If you provide your equipment, you're more likely to be self-employed.

Financial risk

If you're not responsible for any financial risk, such as equipment, materials or expenses, you're more likely to be employed. If you bear the cost of any financial risk, you're more likely to be self-employed.

Casual/freelance workers

Casual workers may be engaged in various ways and on several types of contracts, including zero-hours, short-hour, or guaranteed minimum-hour contracts.

Employers often recruit casual workers using self-employed contracts, such as freelance agreements, contractor or sub-contractor agreements, or supply of services agreements.

Crucially, the labels applied by the parties and the contractual documentation will not be the key to determining employment status; what happens in practice will be essential, and tribunals may disregard express contractual provisions when determining an individual's status.

The employment status of a casual worker can change over time, for example, if their working arrangements develop a regular pattern. Someone can start work as a self-employed contractor but develop worker status as the relationship with the employer progresses. A steady stream of cases in the employment tribunal (and sometimes higher) suggests that many gig economy workers hired as self-employed contractors are actually workers under employment law.

Call [Patrick](#) today to determine your or a worker's status or to defend a worker status claim.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

