

Employment status

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Employment status is big news at the moment, with what seems to be a continuous stream of challenges questioning the status of workers and the self-employed. We've all heard in the press about the Deliveroo and Uber challenges, but what does this mean to the everyday Joe? Employment lawyer, Christine Slevin, takes a closer look.

The first thing to get straight is that workers and the self-employed have either no or limited entitlement to statutory employment rights and, in the case of the self-employed, are subject to different taxation rules. Therefore, the definition of employment status and the test clarifying it are key.

Currently, a question over an individual's employment status can be determined by a court or tribunal based on the facts of the case. When deciding employment status, the court or tribunal must consider the reality of the situation and the true agreement between the parties, irrespective of what any written agreement records.

The somewhat grey definition of employment status was highlighted in the [Taylor Review](#) published in July 2017, also known as the Good Work Report. The review called for a codification of the test for employment status - a proposal which was accepted by the government who pledged *"...to legislate to improve the clarity of the employment status tests to reflect the reality of the modern working relationships."*

The government has not yet ventured into the difficult task of defining employment status or clarifying its test; but history teaches us that attempts to define employment status may prompt armies of shrewd lawyers to draft around the definition.

But what does this mean to the everyday Joe?

One of the significances of employment status is the tax treatment applicable to those who are self-employed. Currently, the consultation considers the responsibility for determining the tax status of a self-employed individual, employed through the [IR35](#) system, and proposes a shift from the individual to the employing organisation. Such a shift currently applies within the public sector and it is proposed to extend this into the private sector as well, with an implementation date of 6 April 2020.

In simple terms, today, a contractor working through his or her own limited company for another private company can decide for themselves if the individual is, in fact, a disguised employee (rather than working on an arm's length business-to-business basis). If they decide the individual is not a disguised employee, but [HMRC](#) later decides that he or she should have been treated as an employee, the individual is liable to pay an extra tax (plus any interest and penalties).

Instead, it is proposed that this decision will be out of the contractor's hands and will be made by the end client (in this case the private company), and any agency paying the contractor. If HMRC later proves that the original status decision made by the agency and/or the end client was wrong, they – and not the individual - will be liable for any tax shortfall.

In summary, come April 2020, if you incorrectly decide your contractors' employment status, your company could be liable for their tax.

For clarification on employment status, call [Christine Slevin](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

