

Are you a worker?

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Worker status was created to reflect the fact that some individuals, whilst not employees, are not fully independent either and are deserving of some protection under law.

[Section 230\(3\)](#) of the Employment Rights Act contains a two-part definition for worker status. Part one defines a worker as an individual who has entered into or works under a contract of employment (all employees, therefore, are also workers).

The second part of the definition requires different elements to be present:

- there must be a contract with the organisation, but this contract does not have to be expressly written, as was the case in Uber (see my earlier [article](#) on this latest case) where the contracts were implied;
- the individual must be contracted to do the work personally (the personal service test) and not in a business capacity. It follows then, that the contract cannot be with a customer or client of any business undertaking; and
- finally, there must be mutuality of obligation; meaning work must be given and paid for by the organisation.

A defining feature of a worker is that they must turn up for work even if they do not want to, whereas someone who is self-employed is free to decide when they work.

Another feature is that self-employed individuals have control over the way in which the work is carried out. Self-employed people also pay their own tax and national insurance, whereas workers and employees pay tax using the PAYE system, which deducts the tax and national insurance at source.

If you need help determining your employment status, or believe you have a worker status claim, call [Karen Cole](#) today.

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

