

**Employment Status – Guidance Note**

**Introduction**

The purpose of this note is to provide guidance on the types of employee schools and academies may engage in order to ensure that they are issuing appropriate contracts.

It is important to appreciate that an individual’s employment status has wide-reaching implications in terms of the rights that they can exercise and the obligations on the employer. An individual’s employment status should be accurately recorded in contracts, statements of written particulars (which are incorporated into the CES Model Contracts) and any other relevant documentation.

Schools and academies should be aware that simply because a contract defines an individual as self-employed or a worker this does not necessarily mean that they are in fact self-employed or workers. The whole context will need to be considered and the various factors listed in the tables below will need to be taken into consideration. The contract is not always considered to be a sole record of the agreement made between the parties.

It is important to note that an individual can have a different status for employment and for tax purposes, schools and academies will need to determine an individual’s status from both of these perspectives. This note primarily focusses on the status of individuals from an employment law perspective.

Schools and academies should seek independent legal and/or HR advice if they are unsure as to the correct status of any employee.

**CES Model Contracts**

The CES provides model employment contracts for schools and academies and these should be used for employees. In addition, the CES provides an ad hoc worker agreement which should be used for casual workers (for example exam invigilators and regular supply teachers).

Both types of model contract contain the relevant written particulars. Schools and academies should ensure that they are using the right type of contract for the right type of employee and should seek legal and/or HR advice if they are unsure.

**Types of employment status**

There are broadly three types of employment status:

* **Employee** – generally an individual who has a contract of employment, is engaged to undertake the work personally and must complete the work provided to him or her by the employer.
* **Worker** – generally an individual who has a more casual arrangement with the employer, he or she must still complete the work personally but there is no obligation to provide work and there is no obligation to accept work (there is however an obligation to complete the work that you accept and for the employer to provided work if an assignment is accepted).
* **Self-employed** - generally an individual who is responsible for determining how and when they work and who submits an invoice for work completed. Often in a self-employment situation the work does not need to be completed by a specified individual.

The table on the next page sets out the factors which should be considered when determining the employment status of an individual.

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| --- | --- | --- |
| **Employee** | **Worker** | **Self-employed** |
| * The employer provides work for the individual personally (which the individual cannot turn down)
* The work is provided on a regular basis
* The employer says when and where the work has to be completed
* The employer supplies the tools and equipment for the work to be done
* The employer imposes a disciplinary / capability procedure
* Employees receive P60s at the end of each tax year and a P45 upon completion of the post
 | * The employer provides work for the individual personally
* The individual occasionally does work for the specific employer
* The employer doesn’t have to offer the individual work and the individual doesn’t have to accept it – the individual only works when they want to
* The contract may use terms such as ‘casual’, ‘freelance’ or ‘ad hoc’
* The individual has to agree with the employer’s terms and conditions to get work – either verbally or in writing
* The individual is under the supervision or control of a manager or director
* The individual cannot send someone else to complete the work on their behalf
* The employer deducts tax and national insurance contributions from the individual’s wages
* The employer provides materials, tools or equipment
 | * The individual can be a self-employed individual or the services could be provided via a limited company
* The individual runs a business for themselves and takes responsibility for its success/failure
* The individual can decide what work they do and when, where and how to do it
* The individual can hire someone else to do the work on their behalf
* The individual is responsible for fixing any unsatisfactory work in their own time
* The client agrees a fixed price for the work – regardless of how long it takes to finish the job
* The individual uses their own money to buy business assets, cover running costs, and provide tools and equipment for their work
* The individual can work for more than one client
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**Employment rights**

The rights that an individual has will depend on their employment status. The table on the next page sets out the rights that each employment status attracts.

|  |  |  |
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| **Employee** | **Worker** | **Self-employed** |
| All of the rights that workers have and the following rights in addition:* Unfair dismissal rights after 2 years’ employment (except in limited circumstances where the rights apply from day one)
* Redundancy pay after 2 years’ employment
* Notice of termination of employment
* Equal pay rights
* Maternity, paternity and adoption leave and pay (where applicable)
* Parental leave and time off for emergencies
* Protection from trade union membership victimisation and permitted time off for union duties
* TUPE rights
* Health and safety protection
* Statutory sick pay
* Right to request flexible working arrangements
* Right to request to work beyond normal retirement age
 | * Written particulars of employment
* National minimum wage
* Protection from unlawful deduction from wages
* Holiday pay
* The statutory minimum length of rest breaks and breaks between shifts
* Limitation of working hours per the Working Time Directive
* Protection against unlawful discrimination
* Whistleblowing protection
* To not be treated less favourably than a full-time worker if they work part-time
* Itemised pay statements

They may also be entitled to:* Statutory sick pay
* Statutory maternity pay
* Statutory paternity pay
* Statutory adoption pay
* Shared parental leave
* Health and safety protection

Workers do not normally have the following rights:* Minimum notice periods if their employment will be ending, if for example an employer is dismissing them
* Protection against unfair dismissal
* The right to request flexible working
* Time off for emergencies
* Statutory redundancy pay
 | * Protection for their health and safety
* In some cases, protection against discrimination
* Other rights and responsibilities that are set out in the contract with the client
 |

**Taxation**

For each employment status tax is paid as follows:

|  |  |  |
| --- | --- | --- |
| **Employee** | **Worker** | **Self-employed** |
| Employer deducts tax and national insurance contributions (both employer and employee) | Employer deducts tax and national insurance contributions (both employer and employee) | Self-employed individual pays tax and national insurance contributions directly through self-assessment. If the service is provided through a company then the company will be the employer of the individual and will pay tax and national insurance contributions accordingly. The company will also pay corporation tax.Be aware of IR35 which will come into force in April 2021. This tax legislation covers arrangements where individuals provide personal services through a personal service company. If the individual is considered by HMRC to be providing services as an employee the party receiving the service can be liable for the tax and national insurance contributions that would have been paid had that individual been an employee. Independent advice should be taken prior to engaging any individual providing services through a personal services company in order to establish whether liability under IR35 is likely to be an issue. |

**Factors used in order to determine employment status**

Schools should ensure that they determine an individual’s status accurately looking at the following factors:

* Whether the service has to be delivered by the individual personally (can there be any substitution or the engagement of helpers?)
* Whether there is mutuality of obligation – does the individual have to accept the work offered? Is the employer under an obligation to provide work?
* Which party provides the equipment needed to complete the work
* Who takes the financial risk in the enterprise?
* Is there an opportunity for the individual to make a “profit”?
* Is the individual considered part of the employing organisation?
* Does the individual receive employee-type benefits?
* Is there mutual intention – did both of the parties have the same intention in relation to the status of the employee?

Guidance is also provided on the gov.uk website and also on the Acas website.

<https://www.gov.uk/employment-status>

<https://www.acas.org.uk/checking-your-employment-rights>

**The Catholic Education Service**

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