

A Simple Guide to Employed, Worker and Self-Employed Status

Why is employment status important and why is it relevant now?

ATC members are likely familiar with the Self-Employed translator or interpreter model. Like your sector, many industries are increasingly adopting the self-employed model for its genuine flexibility and cost-saving benefits. This model often benefits both organizations and individuals, offering flexibility and attractive tax advantages.

However, if self-employment is incorrectly applied, it poses significant risks to organisations. With rising awareness about employment status, group actions have emerged in various sectors using the self-employed model, potentially leading to an increase in claims brought before tribunals.

This guide, along with our webinar on this topic, highlight the key aspects of each employment status for ATC members and outlines steps to audit and mitigate potential risks now.

How could issues arise in your organisation?

Individual Contractor Claims

Issues may arise when a single contractor challenges their working relationship, typically after a breakdown in the relationship. Such claims often involve seeking rights available only to Employees or Workers, leading to a tribunal case. The tribunal will then determine the contractor's legal employment status. If the contractor is successful and the status is deemed to be that of a Worker or Employee, the employer may be required to provide compensation for rights due under the new legal status.

Broader Legal Challenges

Self-employed models can also face broader legal challenges, potentially from unions representing large numbers of claimants, law firms initiating group actions, or regulatory bodies like HMRC.

The claims that could be made against you are claims that your Self-Employed arrangements are in fact not Self-Employed in the eyes of the law, and they seek to win the argument that your arrangements:

- Don't satisfy the legal definition of Self-Employed status
- Exploit workers
- Evade PAYE (NI and tax) obligations associated with Worker and Employee status
- Result in the loss of employee or worker rights, such as national insurance contributions, holiday pay, and, in some cases, the national minimum wage.

Understanding and addressing these potential issues is crucial to safeguarding your organisation from legal disputes and financial liabilities.

The case of Uber and its drivers

Uber, a transportation company that provides taxi, courier and food delivery services, historically used Self-Employed status for its c. 60,000 drivers, avoiding having to pay for income tax, national insurance and holiday pay.

In 2021, the UK Supreme Court handed down a landmark judgment in the case of Uber BV v Aslam. The Court held that drivers were Workers in the eyes of the law and were therefore entitled to certain employment rights meaning Uber could be liable for backdated holiday pay, income tax, national insurance and national minimum wage.

What are the three legal status models in employment law?

There are 3 basic legal statuses at this time in employment law:

- Employee
- Worker
- Self-Employed

Employees have the most rights and, therefore, the potential for the most risks. Workers have fewer rights, and Self-Employed people have very limited rights and therefore, present the lowest risk.

To determine the actual status of the relationship, the law and courts examine each case on its own facts and with legal tests.

The labelling used by the law and courts is not definitive of the matter, which is why it's so important to accurately understand the fundamentals of employment status.

To determine which legal employment status is correct, the legal tests are applied to both:

- Your documents.
- The day-to-day arrangements in place.

It is important to note that your documents alone cannot tell the whole story and, therefore, cannot solely be relied upon as evidence.

Any legal test will involve a deep dive into both your documents and the reality of the arrangement.

Even when you think you're operating a Self-Employed model, you may well not be and thus, you are at legal risk.

If you made some key changes, you may be able to avoid and/or reduce risks of claims.

If you are investigated, or a Worker brings a claim, you may find your processes and your documents, upon review, do not in fact meet the required legal status tests. This leaves you open to a variety of potential claims, which may include:

- Wages claims - such as holiday pay, SSP and national minimum wage. These claims can be backdated, in some instances, to the start of the relationship.
- Tax claims - PAYE liabilities plus penalties too.
- Employment-specific claims – such as unfair dismissal claims and liabilities and penalties too (see below).

What are the key indicators of each employment status?

The key indications of each legal status can be used as a guide to understand whether the people who work for you may not have the correct employment status.

First and foremost, the touchstones of Self-Employed status are **control and lack of any personal service**. The more control you exert over an individual and the more you demand that they personally fulfil duties, the more likely they are legally classified as a Worker or Employee rather than Self-Employed.

Self-Employed

- They are under no obligation to accept work, nor you to offer it once a particular contract is fulfilled.
- They can send a substitute; it does not have to be them personally.
- They control the work, such as when and how the work is undertaken.

- They can negotiate terms with the organisation, rather than the organisation dictating terms.
- They are in business on their own account, they work for others and take the risks of costs, expenses, insurance and liabilities.
- They are not subject to control by you or any other party in any respect.
- They are not supplied with the kit or uniform provided by your organisation.
- They exercise their discretion as to how and when the work is done.
- They are not integrated into your business functions.
- They use their own equipment and skills.
- They freely market and offer their services to other organisations.

Worker

- They are under no obligation to accept work, nor you to offer it once a particular contract is fulfilled.
- They agree to do the work personally; they cannot substitute themselves with another person.
- The other party to the contract cannot be said to be a 'customer or client' of the person doing the work.
- They are subject to some control over aspects of quality, process and delivery of the work.
- They are integrated into your business, which could mean they wear the organisations branded uniform a name badge and they are subject to organisational reporting and quality control.
- There is often sub-ordination in the relationship i.e. the Worker is offered work on terms with little 'wobble-room' i.e. they must personally undertake the work at your rates on your terms.

Employed

- They must do work themselves; they cannot substitute themselves with another person.
- They typically cannot work for other organisations and have ongoing duties of loyalty, and trust and confidence.
- They represent your organisation.
- They are integrated into your business, which could mean they wear the organisations branded uniform a name badge and they are subject to organisational reporting and quality control.
- The organisation has total control over when, what and how work is done and at what rate.

The courts examine your contracts, the facts and arrangements on in each individual case. This is because the courts recognise the inequality of power between the person and your organisation.

What are the consequences if you get employment status wrong?

Misclassifying an individual's employment status in your organisation can lead to significant risks and liabilities.

If someone you consider Self-Employed is deemed a Worker, potential claims could include:

- Backdated holiday pay.
- Backdated PAYE liabilities and penalties.
- Backdated national minimum wage not paid.

If the individual is deemed an Employee, additional claims could include:

- Notice pay.
- Redundancy pay.
- Unfair dismissal claims.
- Parental rights.

Beyond these common claims, there are broader claims applicable to both Worker and Employee statuses, which can further complicate legal and financial liabilities.

What can you do to mitigate employment status claims?

You may well be operating what is often described as 'Self-Employed', 'casual', 'seasonal' or 'zero-hours' model(s). With any of these models, it is vital that the management and terms of people working in these models are correct.

We are actively assisting ATC members and clients across various sectors by updating processes, systems, contracts, and terms to minimise risks associated with employment status.

Our specialist understanding and vast experience of employment status law means we can identify potential issues in your organisation and reduce the risk of claims.

We offer specialist legal guidance on:

- How to re-direct your management of people based on our assessment.
- How to re-draft your terms to ensure you are best placed to avoid claims
- How to maintain Worker status while reducing the risk of valid claims.

ATC Members can benefit from a complimentary initial audit of their documents and a free advice call. During the call, we'll assess how we can help minimise risks within your organisation.

We offer all ATC members:

- **Free initial audit**
- **Free advice call**
- **10% discount**

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