

SELF EMPLOYED OR EMPLOYED?

You can usually work out employment status by asking a few straightforward questions.

You are probably **self-employed** if you:

- run your own business and take responsibility for its success or failure
- have several customers at the same time
- can decide how, when and where you do your work
- are free to hire other people to do the work for you or help you at your own expense
- provide the main items of equipment to do your work
- are responsible for your own NI & Tax payments

You are probably **employed** if you:

- will work to the terms of a contract (including zero hours)
- are required to attend work (unless on leave/sick)
- work for one person at a time, who is in charge of what you do and takes on the risks of the business
- can be told how, when and where you do your work
- have to work a set amount of hours
- are paid a regular amount according to the hours you work or work that you perform
- can't send someone else to do the work
- get paid holiday, sick pay and access to the business's pension scheme

But, what about the grey area, that of **worker**?

Recent cases with the Gig Economy have brought into questions the status of people who provide work for businesses and how easy the lines between employed and self-employed can be crossed.

A **worker** is defined as an individual who works under a contract under which he or she undertakes to perform work or services personally for the other party to the contract and where the other person is not a customer or client of the individual's business.

A person is generally classed as a **worker** if:

- they have a contract or other arrangement to do work or services personally for a reward (your contract doesn't have to be written)
- their reward is for money or a benefit in kind, for example the promise of a contract or future work
- they only have a limited right to send someone else to do the work (subcontract)
- they have to turn up for work even if they don't want to
- their employer has to have work for them to do as long as the contract or arrangement lasts
- they aren't doing the work as part of their own limited company in an arrangement where the 'employer' is actually a customer or client

It is essential to get it right because workers are entitled to certain employment rights, including:

- getting the National Minimum Wage
- protection against unlawful deductions from wages
- the statutory minimum level of paid holiday
- the statutory minimum length of rest breaks
- to not work more than 48 hours on average per week or to opt out
- protection against unlawful discrimination
- protection for 'whistleblowing' - reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time

When deciding whether employment status is worker or self-employment there are three essential questions to consider:

- Is there a requirement for the worker's **personal** service?
- Is there a sufficient degree of **control** over the worker?
- Are there **mutual obligations** to the contract?

Whilst these aspects are not the be all and end all, they are significant factors in deciding whether an individual is a worker or genuinely self-employed.