

# Palmerslaw

## Guide to employment status

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**Engaging a workforce according to the correct employment status – whether they are employed, self-employed or a combination – is the responsibility of the employer. Employment status not only affects the way tax and National Insurance Contributions (NICs) are calculated, it also affects the rights that an individual has.**

This guide points out the main areas for employers to be aware of when it comes to employment status, including the different status categories, the significance and uses of each one, and ways to identify an employee.

However, due to the complexity of employment law, it is always recommended that you seek professional advice for tailored and detailed guidance to suit your individual requirements.



# Employment status

Employment status is important for many reasons, not least because it determines what rights an individual has.

There are three different categories of employment status:

- Employee
- Worker
- Self-employed

## Significance of the distinction

The distinction between the three categories is significant for a number of reasons, including the following:

- Some core legal protections only apply to employees, such as protection against unfair dismissal.
- Only employees are covered by the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- An employer is required to take out employer's liability insurance to cover the risk of employees injuring themselves in the course of their employment.



## Different statuses for different purposes

A person's employment status can be different under tax law and employment law. So, whereas HMRC may consider that an individual is self-employed for tax purposes, the tribunal or courts may, in determining the extent to which protection is afforded under employment law, still decide that they are a worker or employee. Generally speaking, an employee will have more rights under employment law than a worker or someone who is self-employed.

Providing a **contract of employment** can help to clarify the employment status of individuals but a question that is often raised before tribunals is whether a contract is a 'sham' that obscures the true nature of the relationship e.g. an individual may have entered into a contract purporting to be a self-employed contractor but they later wish to argue that they are actually an employee or worker.

## How to identify an employee

Over the years, the courts have developed various tests to identify whether or not an individual is an employee and there are various factors to be considered as follows:

- Is there an agreement for the individual to personally perform work in return for pay?
- Is that individual subject to the control and direction of the person/organisation that pays them?
- Other factors, such as who provides tools and equipment, the degree of financial risk adopted by the individual, whether the individual is paid a fixed wage/salary and whether the individual is paid when absent due to holiday or sickness.

There is no set formula for determining employment status and each case will be decided by taking into account all of the relevant facts. Individuals who fail to reach the high pass mark necessary to qualify as employees may still qualify as workers. So, where an individual is, on balance, a self-employed contractor but there are still some factors which point towards employment, it may still be possible for them to qualify as a worker.

## Call Palmers Law for advice

If you wish to engage the services of an individual, it is important to ensure that you establish their employment status from the outset and put in place the necessary arrangements to comply with the applicable legal obligations.

The specialist employment law team at Palmers Law can advise you on the required documentation and your legal rights and responsibilities towards employees, workers and self-employed contractors.

For bespoke advice about this and any other area of employment law, please contact us.



# Palmerslaw

## Basildon

19 Town Square,  
Basildon,  
Essex, SS14 1BD

☎ 01268 240000

## Rayleigh

105 High Street,  
Rayleigh,  
Essex, SS6 7QA

☎ 01268 988488

## South Woodham Ferrers

Prospect House, 1/3 Brickfields Road,  
South Woodham Ferrers,  
Chelmsford, Essex, CM3 5XB

☎ 01245 322111

## Thurrock

Ascension Chambers,  
Fleming Road, Chafford Hundred,  
Grays, Essex, RM16 6HH

☎ 01375 484444

## Commercial Hub

Suite 1A, Phoenix House,  
Christopher Martin Road,  
Basildon, Essex, SS14 3EZ

☎ 01268 240000

[www.palmerslaw.co.uk](http://www.palmerslaw.co.uk) [enquiries@palmerslaw.co.uk](mailto:enquiries@palmerslaw.co.uk)



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