

Employment Status Guide

Overview

Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.

Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.

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EMPLOYMENT STATUS

Employment Status

The statutory definition of an employee can be found in the **Employment Rights Act 1996** (“ERA”). **Section 230 (1)** of the ERA defines an employee as “*an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment*”.

Section 230 (2) of the ERA defines a contract of employment as “*a **contract of service** or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing*”.

Only an Employment Tribunal can determine the status of an individual who undertakes work, therefore there is a plethora of case law where the courts have tried to determine what a ‘*contract of service*’ actually means.

There are generally three categories of individuals who undertake work:

Employees

- Those who work under a contract of service as defined by case law.

Self-employed

- Those who work under a contract for service.

Workers

- These are a hybrid; not quite employees, but not completely self-employed.

Employees are entitled to the most legal rights, workers have some rights and the self-employed have very limited rights.

In general, to determine an individual’s status, a tribunal will look at the following:

- Are there **mutual obligations** on the employer to provide work for the individual engaged and on the individual engaged to perform work for the employer?
- Can the individual **subcontract** or **delegate** their duties?
- Is the individual performing services for others as an individual in business on his own account?
- Is the individual working under the orders of the supplier of services who control when, how and what he must do?
- Does the individual provide his own machinery and equipment?
- Does the individual hire his own helpers?
- Does the individual take a degree of financial risk, i.e. who pays the tax, NI etc.?
- Does the individual receive sick pay; holiday pay etc.?
- Is the individual subject to the disciplinary code in force?
- Is the individual a member of the pension scheme?

The greater the degree of personal responsibility the individual engaged undertakes in any of the above, the more likely he will be considered to be self-employed.

Very generally, if someone can **subcontract** or **delegate** their duties they will usually be self-employed. An employment relationship will almost always require a **mutuality of obligations**. Workers will perhaps be those who don’t have a **mutuality of obligations**, but cannot go as far as **subcontracting** their work.