

False Self Employment

We have had several clients enquire about the ongoing Government moves to clamp down on “False Self Employment” The following is a summary of generic advice from the Experts at Croner, with a few of our own thoughts interjected.

Understanding employment status can be tricky at times, particularly for those who work in the gig economy. In light of recent cases, your client is advised to review their business practices to ensure they are acting in accordance with the law.

To determine the employment status of their staff your client will need to carry out the appropriate employment status test *(or ask for advice from Hornbeam)*.

This will confirm which of the three employment categories individuals fall into employee, worker or self-employed. These categories determine what employment rights individuals are entitled to, such as annual leave and statutory sick pay *(worker isn't a category for tax purposes, just employment rights)*.

When faced with questions regarding status, your client's first instinct may be to rely on existing contractual agreements. Whilst this may help in certain circumstances, they are advised to dig deeper and consider the true nature of their respective employment relationships. After all, this is what an employment tribunal (ET) will do if they are faced with a dispute over status.

A correct test will involve three aspects: control, mutuality of obligation and personal service. When assessing control your client will need to look at the balance of power between themselves and their staff. A high level of control is usually associated with employee or worker status. In these situations, employers will typically control the contractual terms, the time and location of work and any rules around dress codes or disciplinary procedures. Self-employed individuals will have more control over matters, including their hours and days of work, and your client should bear this in mind.



Hornbeam Accountancy Services Ltd

Hornbeam House, Bidwell Road, Rackheath Industrial Estate, NR13 6PT

T: 01603 720424 W: www.hornbeam-accountancy.co.uk E: info@hornbeam-accountancy.co.uk

Mutuality of obligation assesses whether employers are obliged to offer work and if staff are obliged to accept work that is offered to them. Your client will need to consider this as only employees will typically be required to accept any work that is offered to them. Again, your client is reminded to look past any contractual terms into how the relationship operates in practice *(this is the legal stuff behind the popular understanding that a long period of relationship points to employment, short contracts indicate self-employment; payment by hours indicates employment, payment by job indicates self-employment. I am not sure whether the requirement to fix errors in their own time if self-employed is part of this category or not, but it can be very important, if it has actually come up).*

The test for personal service will assess whether staff are required to carry out work themselves, or if someone else may be sent in their place. The requirement to complete the work personally is something typically associated with employees or workers, whereas self-employed individuals have the ability to send other individuals to carry out the work on their behalf. This has proven a stumbling block in many recent tribunal cases involving employers such as Addison Lee and Pimlico Plumbers.

Ultimately, your client should keep in mind the more rules in place between them and their staff, the more likely they are to be classed as employees or workers rather than self-employed. It is important that your client has a firm grasp of this as withholding employment rights, whether accidentally or otherwise, will leave them open to costly tribunal proceedings.

If you need any further help with your employment status please ring 01603 720424 or email phil@hornbeam-accountancy.co.uk



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