

HR Guidance

Employment status:

This business guide explains the significance of the distinction between an employee, a worker and a self-employed contractor and also highlights the legal status of volunteers.

Employment status

Fairways HR guidance only provides an overview of the law in this area. For a complete understanding of how it may affect your particular circumstances in the workplace please contact one of our Consultants.

Employee status

An employee is an individual who has entered into or works (or worked) under the terms of a contract of employment. The contract can be expressly agreed (in writing or orally) or implied by the nature of the relationship. To have employee status:

- An individual must be obliged to do the work personally (rather than being able to send a substitute).
- The employer needs to be obliged to provide the work and the employee is obliged to accept the work.
- The employer needs to have some control over the way the employee carries out the work

Worker status

Worker status is sometimes seen as a “half-way house” between employee and self-employed status. Workers are entitled to fewer statutory rights than employees, but do have some key legal rights, including:

- Protection from discrimination.
- Protection against unlawful deduction from wages.
- Entitlement to the national minimum wage.

Self-employed status

The self-employed enjoy no statutory employment rights (although they may be protected by discrimination law).

What is the significance of the distinction?

Legal protections

Some core legal protections only apply to employees, for example the right:

- Not to be unfairly dismissed.
- To receive a statutory redundancy payment.

What is the significance of the distinction? (continued)

Health and safety

Employers owe employees statutory health and safety protection. Self-employed contractors may not be covered under these duties, although they will be covered under an employer's occupier's liability.

TUPE transfers

Only employees will be automatically transferred to any purchaser of the employer's business under a TUPE transfer.

Tax

An employer is responsible for deducting tax and national insurance at source (PAYE) from the salary paid to employees. Self-employed individuals are responsible for paying their own tax and national insurance under self-assessment.

Insurance

An employer must take out employer's liability insurance to cover the risk of employees injuring themselves at work. Self-employed contractors are unlikely to be covered by this type of insurance.

Liability

An employer is liable for acts done by an employee in the course of their employment. This type of liability is unlikely to extend to self-employed contractors.

Legal status of volunteers

The legal status of volunteers is not clear cut, as there is a vast range of different types of relationships, from the purely voluntary to those that are clearly contractual and those in between, which are difficult to define. This ambiguity makes it difficult for organisations taking on volunteers to appreciate any legal obligations that they may owe them.

Legal status of volunteers (continued)

Practical tips for reducing the risk of a legally binding contract

Organisations can reduce the risk of creating a legally binding contract with volunteers by:

- Avoiding making payments to volunteers that could be construed as wages. Payments to cover actual expenses should be clearly identified as such and ideally reimbursed against receipts.
- Removing, or at least minimising, any perks that could be regarded as remuneration.
- Reducing obligations on the part of the volunteer (for example, give the volunteer the ability to refuse tasks and choose when to work).
- Avoiding using language that makes the arrangement sound contractual and adopting flexible language, such as “usual” and “suggested”.
- Treating volunteers fairly. Having clear procedures for dealing with problems and grievances should help reduce the likelihood of disputes with volunteers.