



Work status: HR guide

Description

Introduction

The law on **work status** has had a lot of press coverage. Here is a brief guide on key issues for businesses to consider.

The work categories

The three relevant **work status** categories are workers, employees and the self-employed. Workers and employees have certain rights, such as entitlement to the National Minimum Wage and paid annual leave. Employees (who would also fall within the worker definition) have additional rights, such as the right to statutory sick pay and protection from unfair dismissal (which is normally subject to having two years' service). Self-employed contractors have none of these rights.



This is separate from [HMRC's definition of self-employment](#), and an individual may be considered to

be self-employed for tax purposes while the Courts might find that they are in fact a worker or employee.

Mutual obligation

For a contract to form there needs to be “mutual obligation” regardless of the type of **work status**. What this means is that both parties must have a requirement to honour their side of the bargain. An example could be a gardener promising to tidy a garden for payment. The parties would have to fulfil their obligation.



Worker status

The person must be obliged to provide work or services, personally, rather than sending someone else in their place.

The person must also not be providing the work or services as a business. This means that they must not be in business themselves but instead working for others.

The requirement for personal work or services was considered in the Deliveroo case. It was held that as the couriers had a right to find replacements there was no personal work or services and, as a result, the couriers were not deemed to be workers. By contrast in the [Pimlico Plumbers case](#), it was held that even though the plumber had a right to substitute another Pimlico operative the dominant feature of the contracts was personal performance.

In the Uber case, the main issue was whether the drivers were in business themselves or working for Uber. The Supreme Court [held](#) that the drivers who were providing their services through the Uber app were workers and therefore entitled to the National Minimum Wage, paid annual leave and other protections. The Court did not accept that Uber acted as an agent for the drivers. The Court found that there were a number of elements of control over the drivers by Uber which meant that the drivers were workers rather than independent contractors. The Court also re-emphasised that when determining worker status it is important to look beyond the written contractual documentation and consider the reality of the relationship.

Employee status

Again the work or service must be done by the person under contract, but there also needs to be an element of control present. Control could mean, for instance, whether the person is subject to an

internal disciplinary policy or,

wear a uniform. There may be



other factors to consider too.

Changes

Criticism of working practices, particularly relating to people working in the gig economy and on zero-hours contracts, led to a review by Matthew Taylor. In his [report](#), published back on 11 July 2017, he put forward [various proposals](#).

[The previous government introduced some measures to address concerns raised by Matthew Taylor.](#) Workers now have the right to a day one written statement (to include, for example, details of any paid leave the worker is entitled to). Another measure that has been introduced is increasing fines from £5,000 to £20,000 for aggravated breaches of workers' employment rights.

The new government proposes to abolish the three tier work status categorisation, but we are awaiting further details.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **work status** or have other employment law issues please do not hesitate to [contact](#) me on [020 3797 1264](tel:02037971264).

Do check mattgingell.com regularly for updated information.