



Are your workers employed or self-employed for tax and National Insurance contributions

This factsheet is about your workers' employment status for tax and National Insurance contributions (NICs). For a definitive HMRC view please use our Employment Status Indicator (ESI).

Employment Status Indicator (ESI)

The ESI is an online tool which we use to determine a worker's employment status. We recommend that you use it whenever you need to check your workers' employment status.

It is free and easy to use and can help you work out whether your workers are employed or self-employed in all but the most complex of cases.

Provided that the information you input into the ESI is an accurate account of the work carried out for a particular engagement, you can rely on the ESI outcome as HMRC's view of the status for that particular engagement.

Where you have obtained an ESI outcome to determine a worker's status you should retain:

- the printer version of the ESI result
- the printout of the Enquiry Details Screen showing the engagement details and the replies to the questions asked
- the engagement contract where applicable
- any other documentation or information you relied upon when completing the ESI.

Go online at www.hmrc.gov.uk/calcs/esi.htm

The ESI tool should **not** be used for determining the status of:

- office holders (such as company directors and other certain individuals who are appointed to a post)
- individuals who provide their services through a limited company (known as IR35)
- contracts with agencies to provide services to another person (client).

Employment status and the law

For tax and NICs you are responsible for correctly determining whether your workers are employed or self-employed.

The employment status of your workers is not a matter of choice. It is an established fact based on the terms and conditions of the agreement you have with them. The contract with each worker should accurately reflect the actual terms and conditions agreed, including the genuine rights and obligations you and your worker have to each other.

The law for Income Tax, NICs and VAT does not define employment or self-employment. When we look at employment status, we apply the principles established by the courts. These principles are generally referred to as case law.

Helplines and assistance

- Our detailed information about employment status
www.hmrc.gov.uk/employment-status/index.htm
- Our information for employers
www.hmrc.gov.uk/employers/index.shtml
- Employer's Helpline phone **08457 143 143**.
Opening hours 8.00 am to 8.00 pm, Monday to Friday, 8.00 am to 5.00 pm, Saturday and Sunday.
Closed Christmas Day, Boxing Day and New Year's Day.
For customers who are deaf or hearing or speech impaired: **0845 602 1380** (Textphone).
- New Employer Helpline phone **0845 60 70 143**
Opening hours 8.00 am to 8.00 pm, Monday to Friday, 8.00 am to 5.00 pm, Saturday and Sunday.
Closed Christmas Day, Boxing Day and New Year's Day.
For customers who are deaf or hearing or speech impaired: **0845 602 1380** (Textphone).
- The Construction Industry Scheme
www.hmrc.gov.uk/cis/index.htm
- Construction Industry Scheme (CIS) Helpline phone **0845 366 7899**.
Opening hours 8.00 am to 8.00 pm, seven days a week. Closed Christmas Day, Boxing Day and New Year's Day).
- CIS349 factsheet - Are your workers employed or self-employed - advice for contractors
www.hmrc.gov.uk/new-cis/cis349.pdf

Exceptions

The tax and National Insurance law does contain some special rules that do not follow the normal principles of case law and apply to certain categories of worker in certain circumstances. These affect:

- agency workers
- divers and diving supervisors
- office and other cleaners
- employment of person by spouse
- employment of person by relative in private dwelling house
- lecturers, teachers, instructors
- entertainers
- examiners, moderators, invigilators
- returning officers, counting officers and their staff
- workers who supply their services through intermediaries - IR35
- managed service companies.

For information about these, please visit our website at www.hmrc.gov.uk/employment-status/index.htm

Determining your workers' employment status

In many situations, it will be straight forward to know your workers' employment status.

- In general terms they are employed if they work for you and do not have the risks of running a business, or
- self-employed if they are in business on their own account and are responsible for the success or failure of that business.

Listed below are a series of questions that will help determine your workers' employment status. The same questions also apply for a casual or part-time worker.

An individual worker is likely to be **employed** if the answer is 'yes' to most of the following questions.

- Does the worker have to do the work themselves?
- Can you tell the worker where to work, when to work, how to work or what to do?
- Can you move the worker from task to task?
- Does the worker have to work a set number of hours?
- Is the worker paid a regular wage or salary?
- Can the worker get overtime pay or bonus payments?
- Is the worker responsible for managing anyone else engaged by you?

Your worker is likely to be **self-employed** if the answer is 'yes' to one or more of these questions.

- Can the worker hire someone to do the work, or take on helpers at their own expense?
- Can the worker decide where to provide the services of the job, when to work, how to work and what to do?
- Can the worker make a loss as well as a profit?
- Does the worker agree to do a job for a fixed price regardless of how long the job may take?

If you can't answer 'yes' to any of the above questions, your worker is still likely to be **self-employed** if you can answer 'yes' to most of the following questions.

- Does the worker risk his own money?
- Does the worker provide the main items of equipment (not the tools that many employees provide for themselves) needed to do the job?
- Does the worker have to correct unsatisfactory work in their own time and at their own expense?

HMRC commitment

We aim to provide a high quality service with guidance that is simple, clear and accurate.

We will:

- be professional and helpful
- act with integrity and fairness, and
- treat your affairs in strict confidence within the law.

We aim to handle your affairs promptly and accurately so that you receive or pay only the right amount due.

Putting things right

If you are not satisfied with our service, please let the person dealing with your affairs know what is wrong. We will work as quickly as possible to put things right and settle your complaint.

If you are still unhappy, ask for your complaint to be referred to the Complaints Manager.

What does your workers' employment status mean for you?

For each worker who is your employee, as their employer you are required by law to account for Income Tax and NICs via the PAYE system.

There will also be other implications for you as an employer. For information about these, please visit our employers' home page at www.hmrc.gov.uk/employers/index.shtml

Workers who are self-employed are responsible for looking after their own tax, NICs and any VAT affairs.

As well as tax and National Insurance, you have certain other responsibilities and obligations as someone who engages workers. You might find these links helpful:

- Business Link website www.businesslink.gov.uk which provides practical advice for employers and information on the eligibility of migrant workers
- Department for Work and Pensions employers' home page www.dwp.gov.uk/employers

Customers with particular needs

We offer a range of facilities for customers with particular needs, including:

- wheelchair access to nearly all HMRC Enquiry Centres
- help with filling in forms
- for people with hearing difficulties
 - BT Typetalk
 - induction loops.

We can also arrange additional support, such as:

- home visits, if you have limited mobility or caring responsibilities and cannot get to one of our Enquiry Centres
- services of an interpreter
- sign language interpretation
- leaflets in large print, Braille and audio.

For complete details please:

- go online at www.hmrc.gov.uk/enq or
- contact us. You will find us in The Phone Book under HM Revenue & Customs.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

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Customer Information Team

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