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EMPLOYEE, SELF EMPLOYED OR WORKER?

The distinction between employees and self employed persons is of great importance as the legal rights of both differ in many ways.

For example, employees enjoy many employment protection rights such as the right to bring Unfair Dismissal claims and recover a statutory Redundancy payment (if they meet the necessary qualifying requirements) and are entitled to benefits such as holiday pay. Employers and employees also have obligations that are implied into the contract between them such as a mutual duty of trust and confidence.

The starting point for determining the status of an individual is to decide whether they work under a contract of employment or a contract for services. An often used example to highlight the distinction would be that of a chauffeur (employed) and a taxi driver (self employed).

There are three elements which must be present for a contract of employment to exist:

- The contract must impose an obligation to provide work personally (i.e. no substitution).
- There must be an obligation on the employer to provide work and the employee to undertake that work. and;
- The employer must exercise control over the employee, for example by dictating where and when the work is to be performed and providing the necessary equipment etc.

If each of the above elements are present then the contract may be a contract of employment. Whether or not it is will depend on an assessment of all the other circumstances to paint an overall picture of the relationship which exists between the parties. Matters of relevance include how the person is paid, whether they are subject to the employer's disciplinary and grievance procedures, whether they provide their own equipment and whether they undertake a degree of financial risk/can profit from sound management in performing their task.

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EMPLOYEE, SELF EMPLOYED OR WORKER?

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The label which parties place upon their agreement will not be conclusive and if a dispute occurs the Courts will look behind the parties' intentions and focus upon the way the parties conducted themselves in practice to decide upon the true nature of the relationship.

To complicate the matter of employment status further, in recent years a new category of "worker" has been created by statute. This category extends beyond an employee to also cover those who enter into a contract to provide work or services for another party who is not a professional client. This could include, for example, individuals engaged on zero hours contracts for occasional project work. Workers are entitled to core employment protections such as National Minimum Wage, Holiday Pay and the right not to be discriminated against.

With the above points in mind it is extremely important that employers engage individuals on the correct terms to reflect the reality of the relationship between the parties. This will allow employers to accurately evaluate their exposure to Employment Tribunal claims and the costs of undertaking a redundancy process.

Employers should also maintain effective HR controls within their organisation to ensure that employees, workers and self employed persons are treated as 3 distinct groups. This will prevent any confusion regarding employment status arising and will limit the possibility of individuals acquiring further employment rights etc through the conduct of the parties.

Debenhams Ottaway can carry out Audits of all your Employment documentation to ensure compliance with current laws and best practice. We offer businesses a free audit of contracts and HR policies as part of the Employer Support Service which fully protects your business against the financial exposure of an employment dispute for an agreed monthly fee.

If you would like to know more about the subjects covered in this publication or our services, please contact:

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