

## STATUS

### Self-employed or not?

There are three main categories that a person may fall under:

- Employee
- Worker
- Self Employed

This document is about identifying who may be self-employed. There is wider guidance about status in chapter 1 of the NTF employment manual.

Many trainers will have “self-employed” people working in their yards and assume that the responsibility for getting the employment and tax status correct is that of the individual.

This is a dangerous assumption to make as it is the employer’s responsibility to determine the employment and tax status. If the tax status is wrongly determined then it is the employer who is responsible for arrears of tax and National Insurance contributions that may be due. If arrears of tax go back several years, the tax, NIC, interest and penalties can be considerable so care and caution are needed.

The status also defines the minimum rights and responsibilities of the parties and if the employment status is wrong, the employer may find themselves facing a claim for various employment rights that have been denied, such as holiday pay or notice.

It is possible that an individual may be self employed in one job but employed in another.

In most cases the trainer will control the work and determine what is done and when by racing staff. This will invariably mean the person is an employee and will be subject to PAYE.

Individuals who just ride out are likely to be employees because of the control and direction exercised by the trainer. Licensed jockeys riding out will be treated as self-employed as this is considered part of their profession.

The Government has produced guidance for employers and employees as well as HR professionals.

The employer guidance:

<https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-rights-checklist-for-employers-and-other-engagers>

The employee guidance:

<https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-rights-support-for-individuals>

Some key points:

### **The written contract**

The status is not just down to what the contract says or if there is no written contract, the verbal arrangement. It is what happens on the ground, so the realities of the working relationship.

Employment legislation requires that a person who is an employee or a worker is issued with a Section 1 Statement of their terms and conditions of employment at the start of their employment. This can be in the form of an employment contract.

With a self employed person you may have some form of agreement for service, but it would not be a contract of service.

### **The person wants to be self-employed**

As above, it is not down to what an individual wants. It is how the relationship fits into the various status tests.

In deciding upon the status of an individual the trainer should consider the following:

#### **Mutual obligation**

- Mutual obligation is the obligation upon the employer to provide work and the obligation on the employee to accept that work. This is a necessary feature between an employer and employee.
- *An employer will try to make sure their employees have a continuous supply of work, even if there are occasional quiet periods, and will expect the employees to carry out the work when required.*
- *There is no such mutuality of obligation for a self-employed person.*
- *Note, where work is regularly given and accepted over a period of time, HMRC may take the view that employee status has been created by custom and habit. This would be fact specific.*

#### **Control**

- The degree of control exercised by the employer over the services to be completed, as to how, when and where the work is done.
- Does the employer have the right to control how the person performs the service, what tasks have to be performed and when they are performed.
- *A self-employed person may be required to turn up at specific time and place to do a task but it is unlikely there will be any right of control. The more control the employer exercises, the more likely it is the person is an employee.*

## Equipment

- Does the employer provide the equipment required by the individual?
- *A self-employed person will generally provide their own equipment. This is not decisive on its own as will vary with the work being done.*

## Personal service and substitution

- Is the specific individual required to carry out the work?
- Can they provide someone else at their own expense to carry out the work or task?
- *A self-employed person is providing a service not personal skills and should be able to provide a substitute. So, for example, if a particular person was due to ride out and could not, would they have the right to substitute someone else to do the riding out? This may never happen but the right to substitute someone else must be a genuine one should the situation arise.*

## Financial risk

- *A self-employed person is responsible for how their business is run. They provide their own equipment and takes financial risk. However, the absence of financial risk does not necessarily mean the person is an employee.*

## Summary

It can be attractive to the business owner and the individual to go down the self-employed route, as it feels more flexible and there are not the obligations that arise from an employment relationship. However, from the individual's perspective they will not be covered by RIABS, receive holiday pay or sick pay. From the business perspective the employer could face a fine from HMRC and be ordered to make back payments of tax, NIC plus interest if HMRC decides the person should have been an employee or worker, and the employer is also potentially open to a claim from the individual themselves for holiday pay and other employment rights if they subsequently claim and can prove employee or worker status.

There is an HMRC employment status indicator and more information at <https://www.gov.uk/employment-status-indicator> which is designed to assist employers in checking the status of an individual or group of workers - that is whether they're employed or self-employed for tax, National Insurance contributions or VAT. It asks a series of questions about the role and relationship of the worker with the employer and then indicates the likely status.

This guidance is provided as a general overview only as employment and tax status are complex areas of law. For further advice upon employment status and to discuss individual situations, particularly regarding status and for contracts for truly casual workers, please contact Dawn Bacchus at the National Trainers Federation 01488 71719 or the NTF external legal helpline on 0330 303 1329.