

Employment Status

Employment Status Series (self-employed)

Employees & self-employed

What is the difference between a contract of service and a contract for service?

A **contract of service** is where there is a continuous relationship between the employer and employee. The employer pays the employee a wage, is vicariously liable for the actions of employees and has a degree of control over the employee in terms of the hours worked, deductions made on salary and exclusivity of the service of the employee.

In the case of a **contract for service**, it is generally a once-off relationship which terminates on the completion of specified activities. This role is usually that of an independent contractor. The employer generally pays for the completion of the work in a lump sum, is usually not liable for the action of independent contractors and has less control or responsibility in terms of hours worked and the provision of equipment.

Generally the independent contractor is not subject to the others' control, or right to control the manner of performing the service and is not an employee.

There are many factors to consider if one is an employee or an independent contractor and no one factor is determinative.

It is vital that the distinction is made between an employee and an independent contractor because different rights and obligations apply to each.

The employer is generally liable for the wrongful acts of an employee that occur during the course of employment while this is not so in the case of the independent contractor who is liable for their own wrongful acts.

An employee pays income tax and makes PRSI contributions while an independent contractor is self-employed and deals with their own tax affairs.

Rights are conferred on an employee while the independent contractor has no such rights. An employer owes a greater duty to their employees regarding health and safety at work, than to an independent contractor.

An employee is entitled to the protection provided by various legislation passed through the years whereas an independent contractor does not have any rights under the heads of legislation.

How is self-employment defined?

The definition of self employment will vary in accordance with individual circumstances, however, there are a number of key guidelines:

- Has the person doing the work autonomy over when the tasks are carried out?
- Do they work fixed hours or do they have to conform to a timetable set by the employer?
- Has the person doing the work made an investment in the company?
- Do they stand to benefit if the company does well or suffer financially if the company does badly?

It is worth noting that a person paid totally on commission or piecework may still be regarded as an employee.

The distinction between an employee and an independent contractor is not always clear cut. Just because the parties call the relationship a contract for services (independent contractor) does not necessarily make it so.

For further information and clarification on this, contact your local union representative or union official.

I work in the meat-processing industry, do other guidelines apply to self-employment?

In a number of sectors there are additional regulations covering self employment which include construction, forestry or the meat

processing industry. All **subcontractors** in these sectors are required to complete an **RCT 1 form**.

In addition, self employed workers in the construction industry who earn more than €12,000 per year must pay VAT.

How is employment and self-employment determined?

The guidelines below can assist in deciding whether you are considered to be self-employed or not. While they refer specifically to the **construction, forestry and meat sectors** they are useful for guidance in other sectors.

Additional information is available in the **Code of Practice**. Alternatively you may wish to contact your **union** which may be able to provide advice and support on this and other work related issues.

You are an employee if some or all of the following applies to your situation;

- You are under the control of another person who directs how, when and where your work is to be carried out
- You work set hours or a given number of hours per week or month
- You do not supply materials for the job
- You do not provide equipment for the job other than the small tools of the trade
- You are not exposed to personal financial risk in carrying out the work

- You receive a fixed wage either on a weekly, monthly or annual basis
- You are entitled
 - extra pay or time off for overtime
 - to sick pay
- You receive expense payments to cover subsistence and/or travel expenses
- You only supply your labour and cannot subcontract the work
- You do not assume any responsibility for investment and management in the business
- You will normally be covered under the employer's public liability insurance
- You work for one person or for one business

You are considered to be self-employed in the following situations.

You have control over

- what is done
- how it is done and whether you do it personally
- when and where it is done
- you hours of work whilst fulfilling all contractual obligations.
- the cost & agreeing a price for the job

[In the construction sector for health and safety reasons, all individuals are under the direction of the site foreman/overseer. The self-employed individual controls the method to be employed in carrying out the work.]

You provide

- the materials, equipment and machinery for the job, other than small tools of the trade.
- own insurance cover as appropriate e.g. public liability insurance, etc

You are

- exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract
- free to hire other people on your terms to do the work which has been agreed to be undertaken

You

- receive an agreed contract payment(s) without entitlement to pay for overtime, holidays, country money, travel and subsistence or other expense payments
- Assume responsibility for investment and management in the enterprise
- Have the opportunity to profit from sound management in the scheduling and performance of engagements and tasks

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