

Chartergates Fact Sheet

SUBJECT: EMPLOYMENT STATUS

Introduction:

Getting employment status wrong has numerous negative ramifications. It can lead to a substantial tax bill from HMRC, employment tribunal defeats and a damaged reputation to name but a few. For construction companies there are also the additional penalties of the CIS Scheme to consider.

In this fact sheet we will look at the basic law governing employment status.

Unhelpfully, there is no substantive legislative definition of employee. All we are told is that an employee is a person that works under a contract of service. Consequently, it is case law that provides us with guidance.

Case Law:

The seminal case on this issue is Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497. MacKenna J found that certain factors had to be found in order for a contract of service to be established. This has been refined and ratified by subsequent judgments. When we analyse these judgments, we can produce a list of factors that must be considered before you look at other factors:

- ✓ What (if any) personal obligations bind the individual?
- ✓ What (if any) mutuality of obligations exist between the parties?
- ✓ What (if any) level of control is the individual under?

If you are able to show that any one of the above three factors is not present to a sufficient degree, then the individual cannot be an employee. Importantly, where all three factors are present to a sufficient degree it does not automatically mean that the individual is an employee.

Where all three factors are present to a sufficient degree you must go on to consider the other facets of the relationship and assess whether they are consistent or inconsistent with employment status.

Contractual Terms:

Given their importance the three key factors have garnered significant attention. A lot of this attention is focused on the contractual terms agreed because these form the basis of the agreement and obligations between the parties.

With this in mind it is vital that any terms agreed between the parties are well drafted and up to date. These terms need to address the three key factors in order to determine the individual's employment status.

Employment Law Developments:

In recent years the development of case law in employment status has been mostly in the employment jurisdiction. The most recent and notable case is *Autoclenz Limited v Belcher & Others* [2011] UKSC 41.

In *Autoclenz* the focus was firmly on how Tribunals should assess the written contract where one party (the Claimant) alleges that it is 'sham'. *Autoclenz* widened the concept of a 'sham' making it easier for an individual to circumvent the written terms that they had previously agreed.

With the potential ramifications of *Autoclenz* it is vital that when you draft your terms you take *Autoclenz* into account both in terms of the content of the contract for services but also in how you practically agree the contract with the subcontractors.

If you require help or assistance with employment status, contact us now. Feel free to read our worker status fact sheet which complements this fact sheet.

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