

Chartergates Fact Sheet

SUBJECT: WORKER STATUS

Introduction:

The independent status of 'worker' is becoming more and more prominent. It is now the gateway for individuals to make a number of claims for employment rights. If an individual can prove he is/was a worker, then he will qualify for:

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| ✓ Unlawful deductions from wages: | Employment Rights Act 1996 |
| ✓ Holiday Pay: | Working Time Regulations 1998 |
| ✓ Whistleblower protection: | Public Interest Disclosure Act 1998 |
| ✓ Minimum wage: | National Minimum Wage Act 1998 |
| ✓ Pensions (Auto-enrolment): | Pensions Act 2008 |
| ✓ Discrimination protection: | Equality Act 2010 |
| ✓ Agency Worker protection: | Agency Workers Regulations 2010 |

Tribunal Claims:

In recent years the importance of worker status has grown particularly with the advent of the AWR and the auto-enrolment legislation. Individuals are keen to take advantage of these new rights for two main reasons:

1. Claiming to be a 'worker' does not affect their tax position.
2. It is significantly easier to prove you are a worker rather than proving you are an employee.

Given these facts it is crucial that when you assess the status of your subcontractors you include assessing whether they are a worker or not. You should not just focus on employment status.

Definition of a 'worker':

So, what determines worker status? The definition of a 'worker' in each of the relevant Acts differs slightly, although the differences have little practical impact.

For our purposes we will use the definition of 'worker' in the Working Time Regulations 1998. Therefore, our focus is on Regulation 2 (1) and in particular Regulation 2 (1) (b). The Regulations state that when considering whether an individual is a 'worker' there are three considerations:

1. Is there a contract between the parties (remember this does not have to be in writing)?
2. Does this contract oblige the individual to provide the services personally?
3. Is the individual a business or profession providing services to a client or customer?

If you can answer one of the first two questions above in the negative or the third question in the positive, then the individual will not be a 'worker'. Where written terms are in place between the parties then the Supreme Court's decision *Autoclenz Limited v Belcher & Others [2011] UKSC 41* provides guidance on how to assess whether the written terms accurately reflect the expectations and intentions of the parties. If

you are reviewing the terms you have agreed with the subcontractors that you engage you must do so in light of *Autoclenz*.

Discrimination legislation:

When it comes to the Equality Act 2010 the Tribunals take a slightly different approach to 'worker' status. They consider what is known as the 'dominant purpose' test. Tribunals assess whether the dominant purpose of the contract was for services or personal service. Should you face a discrimination claim then you must consider the dominant purpose test.

Summary:

In summary, 'worker' status is of growing significance with its own legal test and body of law. These should be considered when you are drafting or reviewing contracts. Chartergates are always here to assist you with the issue of 'worker' status.

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