



**HM Revenue
& Customs**

Who counts as an employee?

- Anyone who works for you under a "contract of service" is your employee
- "Employee" includes casual workers, short time, temporary, part time and full time workers
- Written, spoken and implied contracts are all valid

- Broadly, an employee is someone to whom you pay money in return for the working for you under what is called a contract of service

- The "Contract of Service" that makes someone an employee can be written, spoken or just implied. For example by the simple fact that somebody works for you and you pay them

- Employment status is not a matter of choice. Parties cannot simply decide to treat working arrangements as either self employment or employment
- The circumstances of the engagement must determine how it is treated

There are a number of pointers, which would indicate whether or not your worker is self employed

Right of Control

The degree of direction or control a contractor/engager has over a worker is an important fact to consider. The greater the degree of control by the contractor the more likely it is that the worker is an **employee**

It is important to establish who has control over

- what work is done
- when it is done
- how it is done

You should consider not just the degree of supervision, but also your right to direct the worker if you so choose

Financial Risk

The greater the degree of financial risk for the worker the more likely it is that he or she will be self employed The basis of the payment and the surrounding financial circumstances of the arrangement will therefore be important

For example, if you pay a worker for all hours of attendance at an hourly rate, he or she faces little, if any financial risk and is, therefore more likely to be an employee.

On the other hand, a worker may be contracted to carry out a defined task or activity at a fixed price. If the completion of this task is vulnerable to delay, for example because of bad weather or it proves more difficult than anticipated, it is more likely that the worker will be regarded as self employed.

Additional points to consider

- Equipment/Tools
- Was the contract won as a result of competitive tendering process
- Does the worker have the right to hire and pay someone else to do the work
- Length of the engagement

NB - None of the indicators above is conclusive. To make a decision on an individual case you will need to consider all the details, and the overall situation

SUMMARY

Common indicators of employment

- The contractor has the right to control what the worker has to do - where , when and how it is done - even if the contractor rarely uses that control
- The worker supplies only his or her own small tools
- The worker does not risk his or her money and there is no possibility that he or she will suffer a financial loss

Common indicators of employment (continued)

The worker has no business organisation, for example, yard, stock, materials or workers

The worker is paid by the hour, day, week or month

Common Indicators of Self Employment

Within an overall deadline, the worker has the right to decide how and when the work will be done

The worker supplies materials, plant or heavy equipment needed for the job

The worker bids for a job and will bear the additional cost if his or her bid is too low

Common Indicators of Self Employment (continued)

The worker has the right to hire other people who answer to him and are paid by him or her to do the job.

The worker is paid an agreed amount for the job regardless of how long it takes.

Working for more than one employer!

- Employee decides which is their main employer and that employer has responsibility to operate the tax code
- Any other employer will obtain completion of P46 by the employee and operate the tax code as per instructions

Employers responsibilities to PAYE

- To tell HMRC
whenever an employee starts or leaves your employment
- To record
accurate and up to date records of employees personal details
- To calculate
the correct amounts of tax and National Insurance to deduct from each employees pay
- To pay
monthly deductions to HMRC

Employers responsibilities

- Continued
to tell HMRC
the total monthly deductions for tax and
National Insurance and the annual total of
deductions for each employee

Tax and National Insurance thresholds

- Rates of tax 2006-07
- Starting rate 10% charged on taxable pay up to £2,150
- Basic rate 22% charged on taxable pay between £2,151 and £33,300
- Higher rate 40% charged on taxable pay over £33,300

NI Earnings limits and thresholds

Earnings limits	Employee's contribution	Employer's contribution
Below £84 week £364 month	Nil	Nil
£84 to £97 wk £364 to £420 mth	0%	0%
£97.01 to £645 wk £420.01 to £2795 mth	11% on earnings above ET	12.8% on earnings above ET
Over £645 wk or £2795 mth	1% on all earnings above ET	12.8% on all earnings above ET

Tax treatment

- Strictly, the parish council is responsible for operating PAYE on the remuneration paid to its Clerk. In practice, this can be impractical as the only officer available to operate PAYE is the clerk them self.

Tax treatment

- Continued
- As the amounts are small, the average annual remuneration including expenses is between £30 and £1,000, the clerk commonly does not operate PAYE and payments are made in full. In all cases, the clerk should include on their own tax return, or otherwise declare to the Inspector, all payments made to them whether classed as salary or expenses. All these payments should be regarded as chargeable to tax and relief given for expenses claimed as appropriate.

PAYE standard forms and monthly returns

- P45 Part1
- P45 Part3
- P46
- **Payments to HMRC**
- It is more secure to make payments electronically.
Payments must reach us no later than - 22nd of the month
if payment is made electronically or - 19th of the month for
payments by post
- Postal pyts must be accompanied by a payslip
- E/R's with a mthly total to pay over of less than £1,500 can pay
quarterly

Payment of allowances and expense deductions

The tax charge

- For tax purposes council members are treated in the same way as any other individual who holds an office or is an employee
- Emoluments received are chargeable to Schedule E and tax is deducted under PAYE

Emoluments has a wide meaning - it includes salaries, fees, wages and any other profit received. It also includes allowances paid to cover expenses incurred in carrying out these duties, unless these allowances do no more than reimburse expenses actually incurred which are deductible for tax purposes.

A tax deduction can be claimed for -:

- Travelling expenses necessarily incurred in the performance of their duties
- Any other expense which is incurred wholly, exclusively and necessarily in the performance of their duties

There is a series of conditions, each of which must be satisfied before a deduction is given. The conditions are -:

- The expenditure is actually incurred
- The expenditure must be incurred in the performance of their duties
- The expenditure must be such that ANY HOLDER of the office would be necessarily obliged to incur it. Strictly the 'necessarily test' will be satisfied if each and every person holding the office would have to incur the expenditure

Continued

d) Expenditure on anything other than travel must also be incurred wholly and exclusively in the performance of the office holders duties e.g. it may be necessary for a councillor to use their own home telephone in the performance of their duties - but where the same facility is used also for personal calls, the rental costs are not incurred exclusively in the performance of the duties, so no deduction is due for the rental

Any claim should be reduced by any non-taxable reimbursement made by the authority. Where the reimbursement covers the cost of official calls no claim should be made

Relief for Expenses

Where the authority does not reimburse all expenditure incurred, members may claim the excess as a deduction from their emoluments received from duties on behalf of the authority

Members may claim a deduction for tax purposes for such expenditure provided they are incurred wholly, exclusively and necessarily in the performance of their duties as a councillor and are met from their taxable allowance.

The following sets out the various types of expenditure concerned.

You should remember that the Inspector might require evidence of the amounts spent on all or any of the items listed

Travel and Subsistence allowances

T & S allowances are a way of recompensing councillors for expenditure on travel and subsistence necessarily incurred when performing an approved duty. The costs include train, boat, air and bus tickets, taxi fares, petrol costs, parking, meals, refreshments, accommodation and hotel meals.

Cars

Councillors may incur expenses on necessary travelling in the performance of their duties as a councillor for which they do not receive an allowance from the local authority (because the authority does not regard that particular travel as part of the councillors 'authorised duties')

In such cases the councillors may claim expenses as follows -:

- Car - in the case of a privately owned car used by a councillor, an allowance calculated using the Revenues authorised mileage rates i.e. 40p per mile for the first 10,000 miles and 25p per mile thereafter
- Public Transport/Other - the actual cost incurred for which no allowance can be obtained from the local authority

Postage and Stationery

The actual amount claimed should be limited to the actual cost incurred.

The actual costs wholly, exclusively and necessarily incurred in the performance of the duties as a councillor for which no allowance can be obtained from the authority

Telephone

The cost of the calls made wholly, exclusively and necessarily in the performance of the duties of the councillor. No deduction can be given for any part of the rental of the telephone unless no private use is made of it. Any claim should be reduced by any non taxable reimbursement made by the authority. Where the reimbursement covers the cost of all official calls no claim should be made

Household Expenses

Where HMRC accept that an employees home is a workplace they will permit a deduction from earnings.

Where additional household expenses are incurred (light, fuel etc.) relating to those parts of the councillors homes are set aside solely for use for council duties HMRC will accept a standard deduction of £135 per year to cover this. Councillors claiming more than this amount will have to show the additional amount is justified

Timetable for online filing

- More than 50 employees from 2005-06
- Fewer than 50 employees from 2009-10

Tax free payments for qualifying employers

- The tax free payments are
 - 2006-07 £150
 - 2007-08 £100
 - 2008-09 £75
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- Register now for 'PAYE Online for Employers' and use the service.

HMRC PAYE training opportunities

- Paying your employees
- Online filing for employers
- Paying expenses and giving benefits to your employees
- End of Year returns
- End of Year expenses and benefits
- How to get the best out of the CD ROM