

# Employed or Self-employed: which category do you fall under and what rights do you have?

## Self-employed Indicators

**Substitution:** Arguably the main indicator of self-employed status. A self-employed individual should always have the ability to substitute themselves and therefore do not actually need to provide the work themselves. This is why all self-employed agreements should include the ability to provide a locum.

**Mutual obligations:** The Practice should be under no obligation to offer work on a regular or frequent basis and the self-employed individual should be under no obligation to accept any work that is offered. It is essential that correct terminology is used in self-employed agreements to ensure neither party is under a strict obligation to provide or perform work.

**Control:** A self-employed individual should have the ability to determine when, where and how they work, and the Practice should not have more control than necessary over the individual. In the dental industry it is important that the Practice has a certain level of supervision over all individuals for operational, compliance and regulatory purposes, but the self-employed individual should have the flexibility in respect of their diary and when they see patients.

**Pay and benefits:** There should be an element of risk for the self-employed person. To put it simply, if they do not work, they will not receive any income. If they do more work their pay will increase.

**Financial risk:** An individual is personally responsible for any losses arising from their work. This means that self-employed individuals should be responsible for correcting any failed or defective treatment and the associated costs. They should therefore have their own insurances in place.

**Taxation:** A self-employed individual is responsible for payment of their own income tax and National Insurance, however this alone is not sufficient to show self-employed status. If the remaining indicators suggest the individual is an employee, the employer may be held liable to account for tax and National Insurance.

## Employed Indicators

**Personal Service:** In contrast of substitution, an employee is required to provide their services personally and there is no right for them to appoint a substitute to perform their work.

**Mutual obligations:** An employer is under an obligation to provide an employee with work and the employee is under an obligation to make themselves available to carry out that work.

**Control:** An employer has a high level of control over its employees; they control what the individual does, how they do it and when they do it. Even a high-level employee is still under the ultimate control of their employer. Employees are expected to conform to the employer's direction, rules and policies, and if they fail to follow these it will likely result in disciplinary action. Such action should not be taken in respect of self-employed individuals.

**Pay and benefits:** An employee is paid a fixed amount on a regular payment date based on their hours worked, irrespective of their performance targets or completion of specific tasks or work done. Employees will also receive benefits such as a pension, bonuses and holiday and sick pay.

**Integration:** An employee performs services which are similar to those performed by other employees and will likely have a range of responsibilities within the Practice. They are entitled to use the employer's policies such as grievance and they are subject to appraisal procedures.

**Facilities and equipment:** An employer will provide its employees with facilities and equipment required by them to do their job. In the dental industry it is common that a self-employed associate or hygienist will be provided with facilities and equipment, therefore it is vital to protect self-employed status that you ensure there is a licence in your written agreement to use the facilities and equipment and/or give the self-employed person the right to use their own equipment.

When a Court is determining whether an individual is employed or self-employed, they will not only look at the written terms but also the reality of the relationship. At FTA Law we draft self-employed agreements very carefully to ensure they protect an individual's self-employed status, however the parties to the agreement must ensure they are following these terms in practice if they wish to protect that status.

# What rights do you have?

## Employee

**Employees have the most rights and protection under employment law. Some key rights are:**

- Written particulars of employment;
- Statutory Sick Pay;
- Protection against unlawful deduction from wages;
- National Minimum/Living Wage;
- Paid annual leave;
- Pension contribution from employer under the auto-enrolment scheme;
- Family rights including Statutory Maternity
- Leave and Pay;
- Protection against discrimination on the grounds of a protected characteristic;
- Protection against unfair dismissal
- Statutory Redundancy Payment.

## Worker

**Some of the key rights available to employees are also extended to workers, such as:**

- Written particulars;
- Protection against unlawful deduction from wages;
- National Minimum/Living Wage;
- Paid annual leave;
- Pension contribution from employer under the auto-enrolment scheme if they are an "eligible job holder";
- Protection against discrimination on the grounds of a protected characteristic.

## Self-employed

Self-employed individuals do not have any of the rights or protections above, save that they are protected against discrimination on the grounds of a protected characteristic if they satisfy the definition of a contract worker under the Equality Act 2010.

An employer is also under a duty to protect the health, safety and welfare of their employees and "other people who might be affected by their business." We would therefore advise that this protection extends to self-employed individuals and Practice Owners should ensure they are providing a safe working environment.