

Employment Status

Human Resources Toolkit

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Understanding the Law

Employee

- Has an obligation to provide a personal service
- There is mutuality of obligation
- Required to work regularly unless they leave
- They cannot refuse to work
- The employer controls the way work is done, including the workload

Worker

- The work for the organisation is more casual. Less structure/irregular working pattern
- Usually must personally do the work
- Not offered guaranteed or regular hours
- Little obligation to be available for work, but should do work they have agreed to

Self-employed

- Are responsible for how and when they work
- The owner of a company or freelancer
- Invoice for payment instead of having a wage
- Has contracts to provide services for clients and are able to work for different clients for different fees

Understanding the Terms

Control

The employer has the power to decide the nature of the work. This includes the what, how, when and where. These details are clearly set out in a written statement of particulars or a contract of employment.

Mutuality of obligation

This means that there is a contract between the employer and the individual (written or oral).

For example, the employer provides the work and the individual accepts the work and is paid in return.

Personal Service

An individual undertakes the work themselves.

A self-employed person would generally be able to send a substitute.

Understanding the Reality

When determining somebody's employment status, it is important to be realistic over the nature of the working relationship. In many cases, it can be difficult to decide whether somebody should be an employee or self-employed. Within Parishes, the confusion is most common among musicians e.g Choir Leaders/Organists. The following questions should be considered:

- are they instructed on when or where they work?
- are they supervised and given instructions on how to do their work?
- are they paid the same amount each month?
- is their work equipment provided?
- are they unable to send a substitute to carry out the work?
- are they subject to performance reviews?

If you answered yes to the above, it is highly likely that somebody is an employee rather than self-employed. Be careful not to get caught out. Often, employers will tell people they are self-employed when in reality they are not. This can happen when organisations do not want to use payroll or offer employment rights.

Still in Doubt?

The government website provides a tool to help you determine employment status. Simply click the links below for further help.

Employment Status Manual: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual>

Employment Status Tax Tool: <https://www.gov.uk/guidance/check-employment-status-for-tax>

If you are determining the status of a musician specifically, guidance can be found on the **Royal School of Church Music:** <https://www.rscm.org.uk/our-resources/guidance-information/paying-church-musicians/new-legal-guidance-on-church-musicians/>

Employment Rights*

Right	Right to receive written statement of particulars	Statutory minimum notice	Itemised Payslip	Statutory Sick Pay	Health and Safety Protection	Paid Annual Leave
Employee	Yes	Yes	Yes	Yes	Yes	Yes
Worker	Yes	No	Yes	Possibly (agency workers)	Yes	Yes
Self-employed	No	No	No	No	Yes	No

*This list is not exhaustive. Please see: <https://www.gov.uk/employment-status/employee>