



GUIDANCE TO HELP DETERMINE AN INDIVIDUAL'S EMPLOYMENT STATUS

ARE YOU EMPLOYING SOMEONE?

An Administrator.... Cleaner..... Youth Worker..... Secretary.... (For Organists please see extra information below)

This guidance provides some information and advice on working out whether you are employing someone.

Any arrangement whereby someone accepts money for undertaking work creates a relationship between the parties this will either be as an employee, a worker (someone who works on a e.g. casual basis or is an agency temp) or self-employed (freelancer/consultant or contractor). Whichever it is, responsibilities come with these arrangements.

It is not always easy to know whether someone is employed or not, and what action you need to take. The first step is to verify the correct employment status of each of your workers.

This is really important because:

- it affects the way Tax and National Insurance contributions are calculated for them
- it determines whether or not you have to operate PAYE on their earnings
- it ensures that you are providing and offering them the correct protection in employment law. Workers, Self Employed and Employees have different rights and it is your responsibility to ensure you protect them!

The Checklist on Determining Employment Status (appendix 1) can help; as well as:

www.gov.uk/employment-status/worker

www.gov.uk/employment-status/employee

www.gov.uk/employment-status/selfemployed-contractor

If the outcome is **self-employed** you should keep a record of the following for each self-employed individual:

- Print out of their details as the Contractor and details of the project/engagement and Print out of a reference

If the outcome is **employed**, you should keep a record of their:

- Contract of employment, Payroll Information Sheet, P45 from previous Employer, References including from their last employer and check and make a note of their ID for eligibility to work in the UK

Safeguarding - Don't forget to consider whether they require a Disclosure & Barring Check

There is no single definition that determines the status of an individual. Ultimately an Employment Tribunal would decide. However it is possible for a PCC to make a judgment based on the following 4 categories:

1. **Control** – Does the individual have the final say in how they do the work? Can they choose whether to do the work themselves or can they send someone else to do it? Can they choose when and how they work (or does the PCC tell them what to do and when to do it?)
2. **Integration** - Are they responsible for hiring other people and setting their terms of employment if they need help with the work? Are they exempt from having action taken against you using the PCC's disciplinary procedures and have no access to your grievance procedures? Are they excluded from PCC benefits and perks?
3. **Mutuality of Obligation** – Does the PCC offer work to them only if and when it is available? Can they decide when they will work and can they turn the work down that is offered? (or are both parties of a view that a contract of employment exists)?
4. **Economic Reality** - Are they responsible for meeting the losses of their employment as well as taking the profits? Are they responsible for correcting unsatisfactory work at their own expense? Do they have to submit an invoice to the PCC for you to pay them? Do they get a fixed payment for the job (including labour and tools/materials)? Do they provide the main items of equipment needed to do their job? Do they work for a range of different employers?

If the PCC answers **YES** to most of these questions, it is likely that the worker is **Self Employed**.

If the PCC answers **NO** to most of the questions, a logical conclusion is that an employment tribunal would have little difficulty in finding that the **PCC is the employer** especially if it is the PCC that is paying him/her for their work.

ORGANISTS

If the PCC determines that an organist is employed:

There are differing views on the employment of Organists from some professional musical organisations such as, the RSCM. Our advice is that IN MOST CASES the contract should be with the PCC and with the current minister being a party to the contract in order to give his/her agreement to the appointment under Canon B20. The PCC's employment policies will apply to the employment.

If the PCC determines that an organist is self-employed:

It is quite possible and correct that in certain circumstances, an organist will be genuinely self employed, but this is **NOT** the default position and the PCC will need to see and keep on file

evidence that the person is registered with HMRC as self-employed and this was explicitly recognised in the Self Employment Agreement.

A sample employment contract is attached (appendix 2)

A sample Self Employed (Consultant/Contractor) agreement is attached (appendix 3)

Disclaimer:

I have taken great care in creating these pages. However, they are not intended to be a substitute for specific legal advice. The CDBF cannot be held responsible for any errors or omissions.

Appendix 1 CHECKLIST TO HELP DETERMINE INDIVIDUAL'S EMPLOYMENT STATUS

ADVICE: If you answer two or more questions using the 'employee status' column, it is very likely that an Employment Tribunal will consider the individual engaged in the provision of service/s as having an **EMPLOYMENT STATUS of EMPLOYEE**

KEY QUESTIONS	'CONSULTANT' STATUS	'EMPLOYEE' STATUS
<p>Place of work</p> <p>Will the PCC provide the place of work to do the job? How much work is done on the church's premises?</p>	Not normally Church's premises	Church's premises
<p>Financial risk for expenses and unsatisfactory work</p> <p>Will the PCC pay an agreed total fee for the whole assignment? Will the PCC cover the cost if the assignment is not completed on time or bear the cost of correcting any unsatisfactory work?</p>	Borne by individual. Total fee should include expenses (except that major disbursements -e.g. expenses - supported by receipts - may be invoiced). Total fee should not refer to daily/hourly rates.	Borne by the PCC
<p>Equipment and administrative support</p> <p>Will the PCC provide the resources and equipment to do the job? What investment has the worker made in his/her business? What overheads does he/she meet?</p> <p>Can profits vary depending on how well/badly the contract is performed?</p>	<p>Supplied by the Individual</p> <p>Yes</p>	<p>Supplied by the PCC</p> <p>No effect on Salary</p>
<p>Management</p> <p>Will the PCC allow the person, by and large, to organise the assignment according to their own time and methods subject only to the general terms of reference of the assignment?</p> <p>Can the individual be given another task without notice?</p> <p>What notification of illness must be given?</p>	<p>Not supervised by the PCC staff or subject to the PCC's usual terms and conditions. Does not have executive authority e.g. to authorise expenditure.</p> <p>Not as part of this consultancy.</p> <p>Does not receive the PCC's benefits.</p>	<p>Supervised by the PCC staff and subject to the PCC's usual terms and conditions e.g. has job description.</p> <p>Yes</p> <p>Receives PCC's benefits e.g. sick pay, holiday pay</p>
<p>Frequency of work</p> <p>Will this form part of a regular series of similar contracts over a period of time?</p>	Irregular assignments	Consecutive regular assignments
<p>Payment</p> <p>Will the PCC expect the person to produce invoices for the fee and any other agreed costs before any</p>	Fees for services performed are paid against an invoice, preferably a VAT invoice.	Payment through payroll administrator. NI and Tax is

payments are made?	Responsibility for NI and Tax accepted by individual.	responsibility of the PCC.
Independence Will the PCC consider the person as part of the organisation?	Freedom to work for others; not "part and parcel" of the PCC	The PCC controls and supervises hours worked. Master-servant relationship exists.
Termination Will the PCC allow the work relationship to terminate after a set period rather than when the job is complete?	When the job is complete (no notice period)	By notice period only

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