

Determining a worker's Employment Status for tax and employment law purposes

'IR35' is the name given to a piece of tax legislation introduced by HMRC in 2017. The IR35 legislation affects those who supply their services to clients via an intermediary (usually their own company, often known as a 'personal services company' or a limited liability partnership). The regulations define the tax employment status by assessing the working arrangements/activities of the individual engaged and determines what can be recognised as a separate company from a taxation perspective via a personal services company and what work should be taxed in the same way that a general employee should be and is in scope of the IR35 Regulations and subject to be processed via the hiring company's payroll and subject to tax and NI.

Where contract standing orders are in place to contract with an alternative intermediary agency, it's important that the contracting manager receives assurance from the intermediary authority that the worker being supplied is subject to the relevant tax and NIs.

For staff hired from an alternative agency supplier or hired directly via a personal services company, then managers are required to use the HMRC online checker to establish the workers tax status prior to engaging the worker. [Link to the HMRC Employment Status for Tax Checker](#) . The checker is to be used to determine whether payment is required to be processed through payroll and employment taxes deducted. This enables the Council to comply with IR35 Regulations. Should the results of the checker indicate that the contractor being used is within scope of IR35 then managers are required to seek advice from your HR Business Partner.

Managers are required to keep a record (print out) of the results of the online checker and forward a copy to your HR Business Partner where a central record is being maintained for HMRC audit purposes.

The link to the tax checker tool is also to be used to assess whether **self-employed** employment status (also known as a **sole trader** see [link](#) for a definition) workers can remain as such or need to be employed whereby the Council would be required to treat them as an employee and deduct the appropriate taxes.

In addition to the information above relating to taxes, it is also worth noting that it is important for managers to be able to determine a worker's employment status so the employment rights, responsibilities and liabilities of the employer are understood. The following describes the difference between an employee and a worker.

Employee

Employees are entitled to a wide range of employment rights, including all those to which a worker is entitled. Employees have an obligation to carry out the work an employer requires and the employer has an obligation to provide this work. This is known as having a 'mutuality of obligation'.

Examples of employee rights include:

- written statement of employment
- itemised pay slip

- the National Minimum Wage, National Living Wage
- holiday pay, maternity and paternity pay etc
- the right to request flexible working hours
- the right not to be discriminated against.

Worker

Generally there is no requirement for a worker i.e casual or zero hours staff to undertake work unless they agree to this and there is no requirement for an organisation to always offer this work. This is known as there being 'no mutuality of obligation'. A worker may also work to the terms within a contract of employment and generally have to carry out the work personally. However some workers may have a limited right to send someone else to carry out the work. Workers are entitled to some employment rights including:

- the National Minimum Wage, National Living Wage
- holiday pay
- protection against unlawful discrimination
- the right not to be treated less favourably if they work part-time.

If a manager is engaging an individual genuinely as a worker, then the worker will not be entitled to all the same employment law rights as employees. Managers should therefore be careful that workers are not inadvertently engaged as employees, as this could lead to the workers being entitled to additional employment law rights. The guidance set out in this document will assist to ensure that the correct documentation and structure is in place to prevent this occurring. Managers can speak to Legal Services if they require any advice on the employment law issues of engaging workers on extension 6309 or email wlscomm@warwickshire.gov.uk