

#MusicMark2016



Music Mark Annual Conference

Supporting Progression for All

Friday 11th & Saturday 12th November 2016

www.musicmark.org.uk

Membership organisation, subject association and charity.

Employment and HR 101

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Objectives

- Key concepts around employment status
- To acquire a basic understanding of the employment law landscape and responsibilities of employers
- Mandatory terms and conditions that must be provided to employees



Employment status

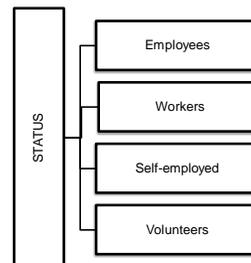


Employment Status

- Employees
- Workers
- Self-employed or contractors
- Important to determine
 - different rights
 - different hours
 - health and safety
 - vicarious liability
- Substance of relationship
- Key concepts: Mutuality of obligation, personal service, degree of control and subordination



A hierarchy (of sorts)



Employee – statutory definition

An **“employee”** is an individual who has entered into or works under...a contract of employment”.

“Contract of employment” means “a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing”.

Employment Rights Act 1996, s. 230(1) and (2)



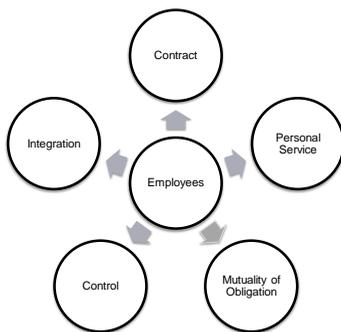
Employee – common law tests

There are various tests:

- The **control** test
- The **economic reality** test
- The **business integration** test
- The multiple or multi-factorial test



Employees



Worker – statutory definition

A **“worker”** is “an individual who has entered into or works under (or, where the employment has ceased, worked under) –

- A contract of employment, or
- Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual...”

Employment Rights Act 1996, s. 230(3)



Worker – common law interpretation

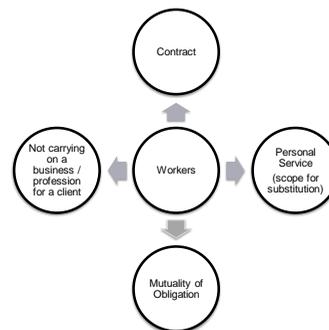
“The intention... is plainly to create an intermediate class of protected worker, who is on the one hand not an employee but on the other hand cannot in some narrower sense be regarded as carrying on a business...”

“... the policy behind the inclusion of limb (b)... can only have been to extend the benefits of protection to workers ... who are viewed as liable to be required to work excessive hours, to suffer unlawful deductions from their earnings or to be paid too little... the purpose of the Regulations is to extend protection to workers who are, substantively and economically, in the same position...”

Byrne Brothers (Formwork) Ltd v Baird and others [2002] IRLR 96



Workers



The difference between employees and workers

- Worker status has a lower “pass mark” than employee
- Fewer rights (e.g. unfair dismissal, redundancy payments etc.)
- Typically more transient/ less integrated
- Mutuality still exists – but with (limited) scope for substitution
- Still subordinate



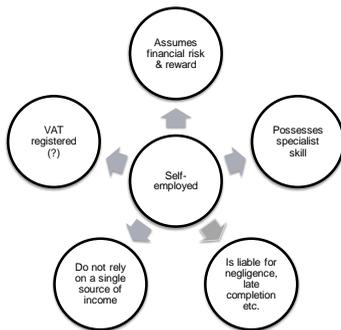
Workers

Typical examples may include:

- Self-employed labourers who work as sub-contractors
- A casual worker
- A independent consultant (working for a fixed period of time)
- A commission only salesman
- But... ALWAYS FACT DEPENDENT



“Genuinely” self-employed



Volunteers



Is there a contract?

To establish relevant employment protection an individual must first establish that they have a contract with an organisation. This will require existence of the four basic elements of a contract:

- Offer
- Acceptance
- Consideration
- Intention to create legal relations

The absence of a contract between an individual and an organisation will be fatal to a claim under *ERA 1996* or the *EqA 2010*



Key employment law rights



Right not to be unfairly dismissed

- Applies only to employees
- With 2 years' service (in most cases)
- Reason for dismissal must be recognised as potentially fair
 - Capability/qualifications
 - Misconduct
 - Redundancy
 - Unlawful to continue employing
 - 'Some other substantial reason'
- And a fair process must have been followed



Redundancy

Meaning

- Business has or will cease to exist
- Place of work has or will cease to exist
- Requirement for employees to carry out work of a particular kind has or will cease or diminish

Eligibility for redundancy payment (and unfair dismissal claim)

- 2 years' service



Redundancy cont'd...

Fair procedure

- Consultation
- Selection: pools and criteria
- Considering alternatives to dismissal
- Considering alternative jobs

Collective consultation

- 20 or more redundancies ...
- ... in a 90 day period
- 30 days/45 days consultation
- Required information
- Consultation



Discrimination

Protected Characteristics

- Age
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation



Discrimination cont'd...

Types

- Direct
 - because of
 - association
 - perception
- Indirect
- Harassment
- Victimisation
- Reasonable adjustments (disability)
- Discrimination arising from disability



Equal Pay

- Equality clause implied ...
 - ... operates when employee does
 - Like work, i.e. same or broadly similar
 - Work related as equivalent under job evaluation
 - Work which is of equal value
 - ... to that performed by member of opposite sex ...
 - ... in same employment
 - Unless because of material factor other than sex



Atypical Working

Part-Time and Fixed-Term Work

- Don't treat less favourably than valid comparator
- Unless objectively justified

Fixed-Term becoming permanent

- 4 years service
- Renewal or non-fixed-term contract
- Unless objectively justified



Family Rights

Pregnancy and maternity leave: Key rights

- Time off for antenatal appointments
- Health and safety protection while pregnant and breastfeeding
- Up to 52 weeks' maternity leave. Employees are entitled to one year's statutory maternity leave, regardless of length of service
- SMP for up to 39 weeks
- The right to return to the same job
- Priority for alternative employment in redundancy cases
- Protection from dismissal, detriment or discrimination by reason of pregnancy or maternity
- KIT days



Family Rights cont'd...

Other rights

- Paternity Leave and Pay
- Adoption Leave and Pay
- Shared Parental Leave and Pay
- Parental Leave
- Time off for Dependents
- Flexible working



Data Protection

- Collection
- Processing
- Storage
- DSARs



Terms of the employment contract



Contract of Employment

Types of Terms

- Express (whether or not written down)
- Implied
 - “officious bystander” test
 - deduced from conduct
 - “business efficiency”
 - custom and practice
- Statutory
- Incorporated, e.g. from collective agreements or policies with contractual force



Employees – Minimum information

To be provided in writing within two months:

- names of employer/employee
- date employment began
- date continuous employment began
- scale/rate of remuneration/method of calculation
- payment intervals
- hours of work (including any normal working hours)
- entitlement to holidays, including public holidays, and holiday pay (including how any payment on termination is to be calculated)



Employees – Minimum information cont'd...

- entitlements during incapacity (including sick pay)
- pensions and pension schemes
- notice to terminate
- job title or brief description of work
- if not permanent employment date or circumstances in which contract will end
- employee's place of work
- employer's address
- any collective agreements affecting the employment



Employees – Minimum information cont'd...

- additional information to be provided if the employee may be required to work outside the United Kingdom for a period of more than one month
- any disciplinary rules or disciplinary/dismissal procedure applicable to the employee (may refer to another document)
- to whom any grievances, or any appeals about disciplinary/dismissal decisions may be raised and any relevant procedure to be followed



Contract of Employment cont'd ...

Changing the contract

- Consent
- Unilaterally (change clause?)
- Dismiss and re-engage



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