

EMPLOYMENT STATUS OF SELF-EMPLOYED WORKERS IN SCHOOLS

1. Introduction

- 1.1 Schools are required to ensure that payments to individuals who provide a service to their school are treated appropriately in respect of personal tax and National Insurance contributions (NIC).
- 1.2 Determining whether or not an individual's payment should be subject to PAYE (Pay As You Earn) tax and NIC must be carried out by a representative of the school prior to any contracts being issued whether they are written, verbal or implied and before any work is undertaken.
- 1.3 The following HMRC guidelines are to support school managers in determining the employment status of current and future workers providing services to the school. They should also assist in developing good practice and minimising the risk of contravening HMRC regulations.

2. Background

- 2.1 When the school takes a worker on, it's the school's responsibility to determine the worker's employment status i.e. whether they're employed by the school or self-employed. This applies for all workers, whether they're full-time, part-time, permanent, temporary, or casual.
- 2.2 It's important for the school to get their workers' employment status right, because it affects the way tax and NIC are calculated for them. And it determines whether or not the school has to operate PAYE on their earnings. If HMRC deem the employment status to be incorrect the school could end up having to pay extra tax, NIC, interest and penalties
- 2.3 It may be difficult to make a judgement whether someone should be treated as being employed or self-employed, especially where that individual may have been working at the school on a regular, ad-hoc basis or for a lengthy period of time. However, HMRC are clear that employment status isn't a matter of choice for either the school or its workers. It's a matter of fact, based on key terms and conditions of the working relationship and even if a contract says a worker is self-employed if the facts indicate otherwise then the worker may be the school's employee.

3. Determining employment status

- 3.1 HMRC publishes guidance for employers to assist in determining the employment status of their workers. Given this HMRC advice, it is absolutely necessary for the school as employer to examine the real nature of the relationship between the school and individuals especially in terms of what the parties call their relationship, or what they consider it to be, if it is not immediately clear.
- 3.2 As a general guide, if the answer is "yes" to **most** of the following questions, then HMRC would determine that the individual is *probably* a worker and should be employed by the school and be paid and taxed through payroll:

- Do they have to do the work themselves?
- Can the school tell them how, when or where the work is to be carried out?
- Are they required to work a set amount of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week or month?
- Can they receive overtime pay or bonus payments?
- Does the school provide the major equipment or tools to carry out the work?

3.3 If the answer is “No” to the above questions but “yes” to the following questions, it **usually** means that individual is self-employed for the service that they are providing:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money in the business if they fail to deliver the service?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many workers can provide themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the service?

3.4 It should be noted that a person who is categorised as self-employed doing one type of work should not automatically be treated as self-employed for all types of work that they undertake.

3.5 These HMRC links provide further information:

<http://www.hmrc.gov.uk/employment-status/>

<http://www.hmrc.gov.uk/payerti/employee-starting/status.htm>

4. Types of work to consider that will determine the individual’s engagement

4.1 The UK’s legislation in respect of income tax, social security, employment or discrimination sometimes distinguishes between certain types of worker by giving rights to some types and imposing duties on their engager. There is also no single definition of ‘worker’ which means that each body of legislation (e.g. employment and tax law) may define ‘worker’ and indeed ‘employee’ and ‘employer’ in quite different ways.

4.2 The school is required to make a decision based on the facts of each particular engagement. This procedure is designed to ensure that the school makes the correct decision and so minimises the risk to the school if the wrong type of employment status is determined (the financial implication is that the school would be liable for any tax and NI due on the payments made without recourse on the individual, plus interest and a penalty charge).

- 4.3 The employment status decision is taken by the **Engaging Officer**. This person is a school employee who acts as the school's representative in leading the particular piece of work an individual is being asked to provide. This person must have a clear understanding of the nature of the engagement.

5. The Procedure

- 5.1 This Procedure only applies when engaging individuals. It does not apply to contracts that the school enters into with limited companies or partnerships (where there would be no tax or NIC risk to the school).
- 5.2 Before a contract for service is issued, service managers must check the employment status of the individual. It is important that the check is carried out even if the individual has declared themselves as self employed. The onus is on the school to determine this.
- 5.3 If the individual is employed in more than one job then the same exercise has to be undertaken for each job or each establishment i.e. an individual may work in 3 different schools on the same basis but each school must make an assessment of the employment status of the person. A person may be self employed in one job but an employee in another (for example a self employed carpenter may also work as a sports coach in a school as an employee).
- 5.4 For each engagement the Engaging Office, who must have knowledge of how the individual shall be engaged, should complete the **HMRC's Employment Status Indicator**. At the end of the test it determines whether the individual is deemed self employed or employed.
- 5.5 Schools must complete and record the outcome of the **HMRC's Employment Status Indicator**. If the worker's employment status is questioned in the future, HMRC will only be bound by the ESI outcome if the outcome of the ESI can be produced and the actual engagement arrangements reflect what was stated in the test.
- 5.6 Go to <http://www.hmrc.gov.uk/calcs/esi.htm> and the calculator is on the 3rd page. It is suggested to note the reference number generated at the start of the test in case the HMRC site crashes. If you have the ESI reference you will then be able to go back into the test rather than having to start again.
- 5.7 Answer all the questions, as they refer to the specifics of the engagement, and at the end of the test the calculator determines the employment status of the worker.
- 5.8 Save a screen print or print the 'ESI Result' screen and the 'Enquiry Details' screen (via top right of ESI Result screen),

If the Engaging Officer is in any doubt as to the individual's employment status, the Engaging Officer should contact Hackney Education's School Finance or HR teams for advice and assistance.

- 5.9 If the individual is deemed to be an **employee**, they must be paid via the school's payroll and will be subject to statutory deductions as appropriate. The school may put the individual on a zero hour contract. Alternatively, the individual could register with a temporary staff agency or an umbrella company, both of which would manage the tax and NIC arrangements to ensure compliance with legislation.

- 5.10 If the individual is deemed to be **self-employed** then the HMRC ESI results page should be retained by the school and the individual can invoice the school for their work. Self-employed individuals are responsible for calculating and paying their own tax and NICs on any payments made to them.

6. HMRC enquiries or audit of the School

- 6.1 It is very important that the school is able to show an accurate audit trail in the event of a HMRC enquiry or audit concerning decisions made as to whether an individual was self-employed or not.

- 6.2 Should HMRC audit the school's process for determining employment status they are likely to consider the following:

- Did the process for determining the employment status of the worker begin as soon as the school decides it has a piece of work to be done, but has no employee in post to undertake the work?
- A piece of work is required. At what level in the school is this specified?
- If there is a written document describing what work is required, does this follow a standard format? Does each department have a separate method of achieving a job specification?
- What is the approval, costing and advertising/tendering procedure followed? Is this centralised or done within departments? Does the costing process include an element for NICs etc?
- What is actually offered (requirements, rewards, supervision and reporting, longer term prospects) to the candidates for the work? How is this recorded by the school?
- Is ESI used prior to selecting the worker? If not, why not? If it is used, by whom and with what information available? What happens if a question comes up where the answer is not known?
- Do you allow the worker to dictate/influence any or all of the terms and conditions? Does this need approval and at what level?
- What happens if the worker disputes the employment decision you reach?

- 6.3 The school will be liable to pay extra taxes, NIC, interest and a penalty charge if HMRC deem that the school has not correctly determined the employment status of a worker.

7. Written contracts not verbal

- 7.1 The Engaging Officer should ensure it has a written contract in place with a self-employed individual/consultant and must **not** rely on a simple verbal agreement. The written contract should record the reference to the HMRC Employment Status Indicator questionnaire result.

8. Particular categories of potential self-employment

8.1 Careful consideration will need to be given to the following areas of potential self-employment:

- *Visiting lecturers, teachers and tutors*
- *Personal Service Companies*
- *Managed Services Companies*

8.2 This is because the type of work being carried out especially when using a Personal or Managed Services Company is not always classed as self-employment. For example, in some cases a person may be being paid for certain work as an individual but then produces an invoice for the same type of work using a Personal Services invoice.

8.3 Please note that up to 6 April 2012, HMRC applied special National Insurance contribution rules for teachers, lecturers etc. However, from 6 April 2012 that legislation was repealed. Therefore, for all periods after this date the status of teachers, lecturers and tutors should be determined purely by case law for both tax and National Insurance contributions.