

CONTRACT OF SERVICE V CONTRACT FOR SERVICES

While the terms “employed” and “self employed” are not defined by law, the decision as to which category an individual belongs must be arrived at by looking at what the individual does, the way he does it and the terms and conditions under which he is engaged.

CRITERIA FOR AN EMPLOYEE (Any ONE of Which Can Establish Employment):

- Is under the control of another person, who directs as to how when and where the work is to be done
- Supplies labour only
- Receives a fixed hourly/weekly/monthly wage.
- Cannot sub-contract the work
- Does not supply materials for the job.
- Does not supply equipment for the job.
- Is not exposed to financial risk in carrying out the job.
- Does not assume any responsibility for investment and management in the business.
- Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements.
- Works set hours or given a number of hours per week or month.
- Works for one person or business.
- Receives expenses to cover subsistence and/or travel expenses.
- Is entitled to extra pay or time off for overtime.

The fact that an individual has registered for VAT or as self-employed does not automatically mean that he is self-employed.

CRITERIA FOR AN INDIVIDUAL SELF-EMPLOYED:

While all of the following factors may not apply to the job, an individual would normally be self-employed if they:

- Own their own business.
- Are exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract.
- Assume responsibility for investment and management in the enterprise.
- Have the opportunity to profit from sound management in the scheduling and performance of engagements and tasks.
- Have control over what is done, how it is done, when and where it is done and whether they do it personally.
- Are free to hire other people, on their terms, to do the work which has been agreed to be undertaken.
- Can provide the same services to more than one person or business at the same time.
- Provide the materials for the job.

- Provide equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account.
- Have a fixed place of business where materials equipment etc. can be stored.
- Cost and agree a price for the job.
- Provide their own insurance cover e.g. public liability cover, etc.
- Control the hours of work in fulfilling the job obligations.

If there is any doubt as to whether a person is employed or self-employed, the employer should contact Revenue.

Under current Tax and Social Welfare law if the status of an “employee” is found to be appropriate the person engaging the employee is the accountable person for any PAYE and PRSI deductible while the person was engaged, together with appropriate interest and penalties that may arise.

There may also be penalties under various Employment Legislation for wrong categorisation of a person’s employment status.

We strongly advise that you get professional opinion on any contract where there is a question on “of and/or for service”.