

# Code of Practice on Determining Employment Status

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## 1. Introduction

This Code of Practice was first prepared in 2001 by the Employment Status Group under the Programme for Prosperity and Fairness. The group was set up because of a growing concern that there may have been increasing numbers of individuals categorised as being ‘self-employed’ when ‘employee’ status would have been more appropriate. It was updated in 2007 by the Hidden Economy Monitoring Group under the Towards 2016 Social Partnership Agreement.

Due to similar concerns being renewed, particularly in relation to new forms of work, the Code was updated further in 2021 by an interdepartmental working group comprising the Department of Social Protection, the Office of the Revenue Commissioners and the Workplace Relations Commission (WRC). It is intended to be a ‘living document’ which will continue to be updated to reflect future, relevant changes in the labour market, relevant legislation and caselaw.

The Code aims to be of benefit to employers, employees, independent contractors and legal, financial and HR professionals. It is also aimed at investigators, decision-makers and adjudicators in the Department of Social Protection, the Office of the Revenue Commissioners, the WRC, their respective appeals bodies, and the courts.

The purpose of this document is to provide a clear understanding of employment status, taking into account current labour market practices and developments in legislation and caselaw.

In Ireland, there is a wide range of ways to work and to operate a business. Specific legislative protections for workers apply to each type, including self-employment, full-time employment, part-time employment, temporary agency work and fixed-term contracts.

It is important to ensure that workers are correctly classified in a way that matches the reality of the relationship between the worker and the business. The choice of business model should not serve to exclude any worker from their proper entitlements.

The misclassification of a worker as being self-employed when their terms and conditions mean that they are, in reality, employees, is a matter of concern. Misclassification reduces contributions to the Social Insurance Fund and excludes workers from full Pay Related Social Insurance (PRSI) and employment rights protections.

Equally, the Code acknowledges the existence and significant value to the economy of genuine self-employment. The Code is not intended to bring genuinely independent contractors into the employee category.

It is also important to note that the Safety, Health and Welfare at Work Act 2005 applies to all workers on a premises, regardless of their employment status. Employers and employees all have duties under the Act. The Health and Safety Authority (HSA) is the statutory body charged with ensuring compliance in this area.



## 2. Determining employment status

In most cases it will be clear whether a worker is employed or self-employed. However, it may not always be clear, and this can lead to confusion in relation to their employment status.

There is no single, clear legal definition of the terms 'employed' or 'self-employed' in Irish or EU law. In order to determine a person's employment status, both the written or oral contract and the reality behind the contract must be taken into consideration. Although the intention of the parties and any written agreement is given due consideration, they do not on their own determine the employment status.

While the terms of a contract might be quite clear in saying that a person is engaged as a self-employed contractor, courts and statutory bodies may still conclude that they are, in fact, an employee.

Inspectors and adjudicators will consider any formal contracts, but they will also consider how the work is actually carried out and will assess the relationship between the worker providing the service and the business paying for that service. They will consider whether the worker, or indeed the employer, had no option but to sign up to the terms dictated by the other party. The true agreement will often only be understood by analysing in the round all the circumstances and facts of the case.





### 3. Typical characteristics of an employee

While all of the following factors may not apply, an individual would normally be an employee if he or she:

- Is under the control of another person who directs them as to how, when and where the work is to be carried out,
- Supplies labour only,
- Receives a fixed hourly/weekly/monthly wage,
- Cannot subcontract the work,
- Does not supply materials for the job,
- Does not provide equipment other than the small tools of the trade,
- Is not exposed to personal financial risk in carrying out the work,
- 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 a given number of hours per week or month,
- Works for one person or for one business,
- Receives expense payments to cover subsistence and/or travel expenses,
- Is entitled to sick pay or extra pay for overtime,
- Is obliged to perform work on a regular basis that the employer is obliged to offer to them (this is known as 'mutuality of obligation'),
- Has their tax deducted from their wages through the PAYE system.

## Important caveats:

- If the work can be subcontracted and 'paid on' by the person subcontracting the work, it is possible the employer/employee relationship may simply be transferred on,
- It is possible that the provision of tools or equipment will not have a significant bearing on reaching a conclusion about which employment status is appropriate, having regard to all the circumstances of a particular case,
- An individual could have considerable freedom and independence in carrying out work and still be an employee,
- An employee with specialist knowledge might not be directed as to how the work is to be carried out,
- An individual who is paid by commission, by share, or by piecework, or in some other atypical fashion may still be regarded as an employee,
- Some employees work for more than one employer at the same time,
- Some employees may also be self-employed in respect of other work being done by him or her,
- If tax is not deducted from the individual's earnings through the PAYE system, this does not mean a person with the other 'employee' characteristics is self-employed,
- Some employees work remotely or otherwise not on the employer's premises,
- While statements in written contracts to the effect that an individual is not an employee may express the opinion or preference of the contracting parties, the courts have found that they are of minimal value in coming to a conclusion as to the actual employment status of the person concerned and may be overruled,
- Employees may work in a range of ways, including, but not limited to, part-time work, temporary work, seasonal work or occasional work,
- Some employees are paid by reference to contracted hours, while others may be paid by reference to the amount of work actually done,
- The hours of work or remuneration of an employee may be uncertain.



## 4. Typical characteristics of self-employment

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

- Owns their own business,
- Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract,
- Assumes responsibility for the investment and management of the enterprise,
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks,
- Has control over what is done, how it is done, when and where it is done and whether he or she does it personally,
- Is free to hire other people, on his or her 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,
- Provides the materials for the job,
- Provides 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,
- Has a fixed place of business where materials, equipment etc. can be stored,
- Costs and agrees a price for the job,
- Provides his or her own insurance cover e.g. public liability cover, etc,
- Controls the hours of work in fulfilling the job obligations,
- Is not obliged to take on specific work offered to them,
- Is registered for self-assessment tax returns or VAT.



## Important caveats:

- The fact that an individual has registered for self-assessment or VAT under the principles of self-assessment does not automatically mean that he or she is self-employed,
- A person who is a self-employed contractor in one job is not necessarily self-employed in another job. It is also possible to be employed and self-employed at the same time in different jobs,
- In the construction sector, for health and safety reasons, all individuals, regardless of employment status, are under the direction of the site foreman/overseer.





## 5. Why employment status matters

‘Employment status’ means whether you are an ‘employee’ or are ‘self-employed’. An employee is categorised as being engaged on the basis of a ‘contract *of* service’ whereas a self-employed person is engaged on a ‘contract *for* services’.

Employment status has implications for:

- Pay Related Social Insurance (PRSI) contributions and associated social welfare benefits,
- Tax treatment,
- Employment rights - many statutory employment rights are only available to employees, as opposed to those who are self-employed.





## **6. Who makes the decision in relation to employment status**

There are different statutory bodies in place that make determinations on the employment status of a person for the purpose of PRSI, tax and employment rights.

These bodies are:

- Scope Section in the Department of Social Protection, which determines employment status with a view to deciding the appropriate class of PRSI for an individual,
- The Office of the Revenue Commissioners, where employment status determines tax treatment,
- The adjudication service of the WRC, which determines employment status as a preliminary issue when adjudicating on employment rights complaints.

Decisions of Scope Section or the WRC or Revenue are not binding on each other.

Appeals from Scope Section are referred to the Social Welfare Appeals Office. Appeals from the WRC are referred to the Labour Court. Appeals from Revenue are referred to the Tax Appeals Commission.



## **7. What are the key factors in making a decision on employment status**

Certain factors or 'legal tests' have to be considered when deciding if a worker is an employee or is self-employed. The five main factors in establishing the difference between a 'contract of service' and a 'contract for services' have evolved from the caselaw of the courts.

These factors are:

- mutuality of obligation,
- substitution,
- the enterprise test,
- integration,
- control.

It is important to note that none of these factors is determinative on its own. It is necessary to take all of them into account and to weigh them up in a rounded way, when making a determination as to the correct employment status of a worker. Every case is examined on the basis of the facts that pertain to that case and determinations made accordingly.

A more detailed description of the key factors is set out in Section 8 and Appendix 2.

Further information on the application of the legal tests is at Appendix 3.



## 8. Description of key factors

Key Factor	Description
Mutuality of obligation	Whether and to what extent there is an obligation on one party to provide work and on the other party to accept it.
Substitution	Whether and to what extent the worker is allowed to send a substitute in the event that they are unable to do the work themselves and, if applicable, who engages and pays the substitute
The enterprise test	Whether and to what extent the person who has been engaged to carry out the work is doing so as a person in business on their own account, and has the ability to profit from their own efficiency/entrepreneurial skill or, conversely, runs the risk of suffering a financial loss.
Integration	Whether and to what extent a worker has become an integral part of a business, as opposed to carrying out work that, although done for the business, is peripheral or accessory to it.
Control	Whether and to what extent the person or business paying for the work has control over the worker, including the power to decide what work should be done, as well as when, how and where it should be done.



## **9. Special circumstances and developments in the labour market**

### **9.1 PRSI classification for people who own or control companies**

Employed persons who own or control 50% or more of the shareholding of the company, either directly or indirectly, cannot normally be an employee of that company for PRSI purposes under social welfare legislation. They must be classified as self-employed and are liable to pay PRSI at Class S.

The PRSI classification of employed persons who own or control less than 50% of the shareholding of the company is determined on a case by case basis, taking account of the tests/factors outlined in the preceding sections.

These rules were introduced in 2013. Prior to that, the PRSI classification of all employed persons who owned or controlled shares in the company in which they worked had been determined on a case by case basis taking into account the legal tests/factors outlined above. Currently, where a decision is required in relation to an employment that occurred before 28 June 2013, the legislation affords the person the option of requesting the application of either the old rules or the new rules to that period of employment.

### **9.2 Agency workers**

An agency worker is a person who has an agreement with an employment agency to work for another person or company. For example, a secretary may have an agreement with a secretarial agency to do work for a company while one of their employees is on leave.

Employment agencies in Ireland are regulated by the Employment Agency Act 1971. Under the Act, an employment agency must have a licence to operate its business.

Since 16 May 2012, temporary agency workers covered by the Protection of Employees (Temporary Agency Work) Act 2012 have the right to the same basic employment conditions as if they had been directly employed by the hirer under a contract of employment.

#### **9.2.1 Who is considered the employer of the agency worker?**

This depends on which rights the agency worker is seeking to enforce. Under the unfair dismissals legislation, the employer is the person or company for whom the employee actually works, rather than the agency. Compliance with health and safety requirements is also the responsibility of the person or company for which the agency worker is working.

For the purposes of some, but not all, other employment and equality legislation, the party liable to pay the wages of the employee will, normally, be considered to be the employer of the agency worker.



Under social welfare legislation, agency workers are deemed to be insurably employed, and the party who pays the wages is the employer for PRSI purposes.

### **9.3 Use of intermediary arrangements**

There are two main forms of intermediary structures used in lieu of a direct engagement between the worker providing services and the end-user of those services. These are called personal service companies and managed service companies.

#### **9.3.1 Personal Service Companies (PSC)**

Under this arrangement, a contract for services is not explicitly agreed directly between the individual worker and the end-user availing of those services, but is instead agreed between the end-user and an intermediate company owned/directed by the worker. The intermediary used in such circumstances is what is known as a personal service company (PSC). A PSC is a limited company that typically has a sole director who is the worker/contractor who owns most or all of the shares in the company.

The end-user pays the PSC for the services of the worker, but does not deduct any tax or PRSI from such payments. The PSC pays the worker who, as the owner/director of the PSC, is normally regarded as self-employed for PRSI purposes.

#### **9.3.2 Managed Service Companies (MSC)**

A variation on the PSC arrangement involves the use of what has become known as a managed service company (MSC). In essence, this involves setting up a company, which is generally structured with a number of worker shareholders who may or may not be involved in delivering similar services to the same end-user. The MSC is typically facilitated by a third party agent who organises the legal and administrative affairs of the company. As the individual workers' shareholdings are below 50%, they can either be found to be self-employed or an employee of the MSC.

#### **9.3.3 Identifying the employer**

In many cases, the owner/director or worker/shareholder involved in either a PSC or an MSC is genuinely self-employed. However, in some cases a contract of service situation will be understood to exist after analysis of the real terms and conditions of the employment. Also, in some cases of genuine self-employment, a level of dependency can develop between the worker and the end-user over a period of time, so the relationship may gradually evolve into an employer/employee relationship.

The key point in relation to cases where intermediary structures are used is that the employment relationship will be subject to the same factors/legal tests outlined above when determining whether the worker is self-employed or an employee. In looking at all the facts and circumstances of the case, it is possible that a decision-maker or adjudicator may determine that the end-user is, in fact, the employer.

An end-user who is found to be the employer by the Department of Social Protection will be required, for PRSI purposes, to treat the worker as a direct employee and return employer and employee PRSI at Class A. While PRSI is normally collected through the PAYE system, in circumstances where an intermediary arrangement continues in place, this cannot be done and special collection systems will apply.

## **9.4 Workers in the digital/gig economy**

New forms of work have emerged in the so-called 'digital/gig/platform/crowd' economies. The emergence of these new forms of work can pose a challenge in determining whether a 'contract of service' or a 'contract for services' exists because traditional lines between employers and workers are becoming blurred.

Although the method of engagement of these workers might be different from traditional methods because of the use of modern technology, they will still be categorised as being either an employee or self-employed. Unlike in certain other jurisdictions, this binary approach continues to apply in Ireland. The essential legal tests or factors set out in the preceding sections are still used and are still relevant to deciding whether a 'gig worker' is an employee or is self-employed.

Many workers in the digital economy are genuinely operating in an autonomous, independent, self-employed capacity. Others, however, can be deemed to be engaged as employees in a contract of service situation.

In determining the employment status of such workers, the same approach is taken as with other workers to decide if they are employed under a contract of service, or a contract for services, and each case must be considered in the round and entirely on its own merits.





## 10. Consequences arising from the determination of employment status

A worker's status as an employee or as a self-employed person affects:

- The way in which tax and PRSI is payable to the Collector-General:
  - » As an employee, the worker will have income tax and PRSI deducted from their income through their employer's payroll system.
  - » A self-employed worker is obliged under self-assessment to pay preliminary tax and file their own income tax returns using the Revenue Online System (ROS).
- Entitlement to social welfare benefits:
  - » Although the gap between the social welfare benefits an employee is entitled to and the benefits a self-employed person is entitled to has narrowed in recent years, self-employed persons are entitled to a somewhat smaller range of social welfare supports.
- Rights and entitlements under certain employment legislation:
  - » An employee has rights in respect of working time, holidays, maternity/parental leave, protection from unfair dismissal etc. A self-employed person does not have these rights and protections. (It should be noted that a self-employed person is entitled to avail of the protections provided by the Employment Equality Acts once s/he has a contract to execute any work or service in a personal capacity for the other person).
- Public liability in respect of the work done:
  - » Generally, an employee will be covered by their employer's public liability insurance, whereas a self-employed person is expected to hold their own insurance.



## 11. False self-employment

'False self-employment' is a term used to describe when a worker, who is in fact engaged under an employee contract of service, is treated as though they are engaged under a self-employed contract for services. Where this happens, the worker is deprived of certain employment rights and social welfare benefits; the employer's PRSI contribution is not paid, resulting in a loss to the Social Insurance Fund; and a loss of tax revenue can also arise.

It is important to note that the extent to which a worker may or may not be happy with their contracted arrangement is not a determining factor in deciding the correct employment status. The reality of the working arrangements is key, as assessed through use of the legal tests/factors set out in the preceding sections and as applied to the particular facts of each case.

Ireland operates a binary system whereby a worker is either an employee or is self-employed. The Competition (Amendment) Act 2017 provides a definition of 'false self-employed worker' and 'fully dependent self-employed worker', but the provisions apply only in the context of collective bargaining by a specific set of workers, namely; actors engaged as voice-over actors, musicians engaged as session musicians and freelance journalists. The definitions are not used in determining employment status for other purposes.

### 11.1 PRSI arrears

Where a determination is made that a worker has been incorrectly classified as being self-employed, the employer will be required to pay the relevant PRSI contributions for the employee(s) for the full period in question and may be subject to a range of penalties under the Social Welfare Consolidation Act 2005.



## 12. Assistance and contact information

Where there are difficulties in deciding the appropriate status of an individual or groups of individuals, the following organisations can provide assistance:

### **For matters relating to decisions on employment status for PRSI purposes, contact -**

Scope Section  
Department of Social Protection  
Áras Mhic Dhiarmada  
Store Street  
Dublin 1  
D01 WY03



Tel: +353 (0)1 673 2585 (9am-5pm)



Email: [scope@welfare.ie](mailto:scope@welfare.ie)



Website: [www.gov.ie/en/organisation/departments-of-social-protection/#](http://www.gov.ie/en/organisation/departments-of-social-protection/#)

### **For matters relating to tax -**

Your local Revenue office can help.

Contact Revenue at [www.revenue.ie/en/contact-us/index.aspx](http://www.revenue.ie/en/contact-us/index.aspx)

### **For matters relating to employment and equality rights, contact -**

Workplace Relations Commission  
Information and Customer Service  
O'Brien Road  
Carlow  
R93 E920



Tel: +353 (0)59 9178990 Lo-call: 1890 808090



Website: [www.workplacerelations.ie](http://www.workplacerelations.ie)

## Appendix 1 – Legal definitions of ‘employed’ or ‘self-employed’

There is no single, clear, unified legal definition for the terms ‘employed’ and ‘self-employed’ in Irish or EU law.

At European Union level, a ‘worker’, who enjoys freedom of movement under Article 48 of the Treaty establishing the European Community, is understood, based on European Court of Justice caselaw in the following way:

*‘The essential feature of an employment relationship...is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.’*

(Deborah Lawrie-Blum v Land Baden-Württemberg, Case 66/85 (1986)).

The question of whether a person is an employee or is self-employed for the purposes of Irish *employment rights* legislation depends on the definition contained in each instrument, for example, the Employment Equality Acts, health and safety legislation, the National Minimum Wage Act, the Unfair Dismissals Act etc.

The question of whether a person is an employee or is self-employed for the purposes of Irish *PRSI and tax legislation*, depends on the reality of the situation in which they are working, in accordance with the legal tests/factors set out in this Code.

## **Appendix 2 – Legal tests used to determine employment status**

### **Mutuality of obligation**

The question of whether there is a mutuality of obligation between the parties is of primary importance. Mutuality of obligation means that, under the contract, the payer must provide a reasonable amount of suitable work to the worker, who in turn must perform all such work provided.

Irish and UK courts have consistently regarded mutuality of obligation as the most important factor, to the extent that if it is found not to exist in an employment situation, no further investigation is required. If, on the other hand, a mutual obligation to provide and undertake work is found to exist, the other factors must then be assessed.

As with the other tests, what occurs in practice is examined as well as the terms of the contract. It is important to note that a line in a contract stating, for example, that 'we are not obliged to offer work and you are not obliged to take work' is not sufficient to show the real absence of a mutuality of obligation.

It is also important to note that, in certain circumstances, the nature of the relationship can change over time. This is a complex area, but generally the most common reason this may happen is where the contracting body and the individual begin to regularise the days and times that work is done.

Where this develops into an arrangement whereby work is available on particular days and times of the week and both the contracting body and the worker develop an understanding (whether written or not) that they will present themselves for work on those days and at those times, then it is likely that a mutuality of obligation will be established. In such a scenario, the relationship may have developed into that of employer and employee.

Another caveat is that a person may have a number of separate episodes of employment with a payer. During each individual episode of employment, mutuality of obligation may exist, but there may not be an overarching mutuality of obligation covering the full period of the separate employments.

## Control

Control is the ability, authority, or right of a payer to exercise control over a worker concerning what work should be done, and how, when, and where it should be done.

The degree of control held by the payer and the degree of independence held by the worker should be assessed. The *right* of the payer to exercise control is more relevant than whether they actually exercise this right.

The actual degree of control will vary with the type of work and the skills of the worker. For example, deciding the degree of control that exists when examining the employment of experts can be difficult. Because of their expertise and specialised training, they may need little or no specific direction in their daily activities. When examining this factor, it is necessary to consider both the payer's influence over the worker as well as their control over the worker's daily activities.

The control of a payer over a worker is more relevant than the control a payer has over the end result of a product or service purchased. For example, a payer who engages a self-employed worker to carry out a specific task such as painting a house or installing a kitchen will have a significant level of control over the end product required. However, they will have very little control over how, by whom, and when the work is done.

Factors that might be relevant in assessing the level of control include:

- whether and to what extent a notice period exists in the contract,
- whether and to what extent the relationship is one of subordination,
- whether and to what extent the payer controls the method and amount of pay,
- whether and to what extent the payer decides what jobs the worker will do,
- whether and to what extent the worker requires permission to work for other payers while working for this payer ('restrictive covenants'),
- whether and to what extent the payer controls the working hours of the worker,
- whether and to what extent the worker receives training from the payer on how to do the job.

Note: a self-employed individual may receive training to allow them to carry out tasks within a specific business (e.g. unique features of an IT system) without losing their independence.

## Integration

Under a contract of service, an employee is employed as an integral part of the organisation. Under a contract for services, a self-employed person is not generally integrated within the business. An independent contractor for services is merely an accessory to the business and, thus, not an employee.

Factors that might be relevant in assessing the level of integration include:

- whether and to what extent the worker has a recognised role or title at the place where they work,
- whether and to what extent the worker has other employees who report to them,
- whether and to what extent the worker is listed in the employer's internal phone directory or has an email address connected to the employer,
- whether and to what extent the worker uses business facilities such as a uniform, company notepaper, crèche, tools and equipment,
- whether and to what extent the worker participates in performance management systems, company training programmes or is permitted to participate in internal promotion competitions or merit scheme.

Note: Some businesses require outside contractors to use their internal email addresses for security reasons.

## Substitution

This factor concerns the worker's right to appoint someone else as a substitute for them if they are unable or unwilling to do all or part of the work. In other words, it concerns whether the worker can subcontract the work or hire assistants. An important question can be: 'who does the work when the worker is absent?'

Factors that might be relevant in assessing the level of substitution include:

- whether and to what extent the worker can hire helpers or assistants,
- whether and to what extent the worker has to do the work personally,
- whether and to what extent the payer has a say in who the worker hires,
- whether and to what extent the substitute is controlled by the payer or the worker,
- whether and to what extent the substitute is paid by the payer or the worker.

A typical characteristic of an independent contractor or self-employed person is that they are free to hire other people, on his or her own terms, to do the work which has been agreed to be undertaken.



## The enterprise test

The enterprise test focuses on the worker's exposure to financial risk through carrying out the work, and, conversely, their ability to make a profit through their own effort, creativity and/or entrepreneurial flair.

The question revolves around whether they are in business on their own account, and whether and to what extent they can decide how much investment they are prepared to make based on their assessment of the likely financial return they will achieve.

Employees normally do not have the opportunity to make a profit and they do not normally run the risk of suffering a financial loss, even though their remuneration can vary depending on the terms of their employment contracts. For example, employees working on a commission or piece-rate basis, or employees with a productivity bonus clause in their contract, can increase their earnings based on their productivity. This increase in income is not normally viewed as a profit, as it is not the excess of income over expenses.

Self-employed individuals normally have the chance of profit or the risk of loss. This is because they have the ability to pursue and accept contracts as they see fit. They can negotiate the price (or unilaterally set their prices) for their services and have the right to offer those services to more than one payer. Self-employed individuals will normally incur expenses to carry out the terms and conditions of their contracts and will manage those expenses in order to maximise net earnings. Apart from liquidation, redundancy or reduced hours scenarios, employees generally do not share in the profits or suffer the financial losses incurred by the employer's business.

Factors that might be relevant in applying the enterprise test include.

- whether and to what extent the worker is exposed to financial risk,
- whether and to what extent the worker has the ability to make a profit through their own endeavour,
- whether and to what extent the worker is also an employer,
- whether and to what extent the payer supplies most of the tools and equipment the worker needs,
- whether and to what extent the payer is responsible for equipment or facility repair, maintenance and insurance costs and whether they retain the right of use over the tools and equipment provided to the worker,
- whether and to what extent the worker is responsible for any operating expenses,
- whether and to what extent the worker is financially liable if they do not fulfil the obligations of the contract,
- whether and to what extent the payer chooses and controls the method and amount of pay,
- whether and to what extent the worker is paid a flat rate for the work done or paid at regular intervals,
- whether and to what extent the worker is free to make business decisions that affect his or her profit or loss,
- whether and to what extent the worker has capital invested.

## Appendix 3 – Application of legal tests on a continuum

It is very important to note that none of the legal tests or factors described in this Code is individually determinative. Nor can they be used as a ‘checklist’ of tests to decide whether a person is an employee or not.

In practice, many employees, including casual employees, will meet most, but not all, of the tests of employment. A failure to meet a particular test may not prevent an overall finding that there is in fact a contract of employment.

In other words, an evaluation of each of the legal tests or factors in the context of a particular set of facts will likely result in a range of findings along a continuum. It is necessary, therefore, to take all of them into account and to weigh them up in a rounded way, when making a determination as to the correct employment status of a worker.

## Appendix 4 – Some relevant caselaw

### Irish cases

Roche v Patrick Kelly and Co. Ltd. [1969] IR 100  
 Re Sunday Tribune Ltd (in liquidation) [1984] IR 505  
 Minister for Agriculture & Food v Barry & Ors [2008] IEHC 216  
 Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare [1997] IESC 9  
 Castleisland Cattle Breeding Society Ltd v Minister for Social and Family Affairs [2004] IESC 40  
 Electricity Supply Board v Minister for Social Community & Family Affairs & Ors [2006] IEHC 59  
 Karshan (Midlands) Ltd t/a Dominos Pizza [2019] IEHC 894  
 National Museum of Ireland v Min for Social Protection [2016] IEHC 135  
 Monnie McKayed v Forbidden City Limited t/a Translations.ie [2016] IEHC 722

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An Roinn Coimirce Sóisialaí  
Department of Social Protection

Revenue



**WRC**

An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

This leaflet has been compiled by the Department of Social Protection,  
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