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3HR Legal Weekly

Employment Law

Are you employing workers or employees – and does it matter?

You may have attended our last seminar in which we discussed the above question. In this article we will answer some of the frequently asked questions we have had since the seminar.

The short answer to the above question is yes. It does matter if you are employing workers or employees as they are entitled to different rights.

When employers learn that workers have fewer rights, they usually intend to recruit 'workers' but still treat them as an employee. If you treat a worker as an employee, then despite what is in their contract they may be entitled to the same rights as an employee.

1. Is there an easy way to tell the difference between an employee and worker?

It is not always easy to differentiate between a worker and an employee, and therefore often legal advice is sought. However, considering the below points, if you tick yes to most of these then they are likely to be an employee:

- Do you have an obligation to provide them work?
- Must they accept all the work you provide them?
- Are you their only client?
- Do you provide them with equipment so they are able to carry out the work?
- Must they carry out the work themselves (they cannot subcontract the work to another person)?
- Are they on your payroll?

2. Can you give an example of a worker?

Agency workers and expats often have the employment status of a worker.

3. Can you give some important examples of the different rights workers and employees have?

Here are three examples that are useful to know in most cases:

- i. Employees are entitled to a written particulars of employment within 8 weeks of starting employment (usually known as a contract of employment), whereas workers do not have a right to a written contract.
- ii. Generally workers can be unfairly dismissed safely, whereas eligible employees are protected. Therefore if a worker was not performing, you are not obliged to follow a fair procedure. However, please be aware of any form of discrimination, as employees and workers are both protected from discrimination.
- iii. Employees are entitled to a minimum notice period if they are to be dismissed, whereas workers are not entitled to a minimum notice period unless it is part of their contract.

4. If a worker becomes an employee, what should we do?

Under these circumstances, it would be crucial to seek legal advice. It may be necessary to formalise the change of employment status (put the worker on PAYE, provide a contract of employment etc), or it may involve giving some of the control back to the worker so they remain as a worker. As this is a complex area, it is difficult to provide a general answer and would really depend on the facts of the case.

5. Does a worker have the right to become an employee after 4 years?

A worker does not have the right to become an employee solely on the length of their service. Usually workers do not have a right to become an employee, however if you treat them as an employee this is where it can become complex.

If you were unable to attend our seminar on the 5th March last, and would like a copy of the slides, please email info@3hrlegal.com. Should you have any concerns about whether you are employing a worker or an employee and need advice please do not hesitate to contact us.

Hanna Beg
Solicitor
hanna.beg@3hrlegal.com



Employee Benefits

Auto-Enrolment (Pension Schemes)

Q. We have received a letter from The Pensions Regulator (TPR) asking us to nominate a contact person for communications relating to new legal duties. What do we need to do?

A. Every employer in the UK will need to act so that they can comply with the changes to workplace pension law. To ensure you receive important information on how and when the changes affect your business you are required to register an appropriate point of contact for your organisation. The contact person will need to be chosen by you and could be a member of staff or someone at an external company, such as 3HR, that is helping you to implement your new legal duties.

3HR can help you with any questions regarding your new legal duties, communicating with TPR and preparing for auto-enrolment.

Mark Andrews
Director, 3HR Insurance Broking
mark.andrews@3hrinsurance.com



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

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The registered office is New Broad Street House, 35 New Broad Street, London EC2M 1NH, registered in England and Wales no: 08198795
Tel: 0207 194 8140 Web: www.3hrlegal.com