



Trinity Tax

EMPLOYMENT LAW & TAX UPDATE

October 2024



EMPLOYMENT RIGHTS BILL

Labour’s “New Deal for Working People” will see workers’ rights significantly increased.

This will include protection from **unfair dismissal** from the day they start, a ban on **zero-hour contracts** and more power for **Trade unions**. What does this mean for your business?



EMPLOYMENT STATUS

There are no imminent plans to change the law on employment status, but it is on the government’s radar as they consider “**dependant contractors**”.

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Employment status cases including one at the **Supreme Court** highlight how complex and unpredictable the current law is.

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What’s it like being under an enquiry?
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Are they really self-employed?

EMPLOYMENT RIGHTS BILL



New employment rights coming into force will have a significant impact on businesses.

It may affect the decision to hire new staff, increase the costs of employing them, reduce flexibility and increase the risk of employment claims.

What are some of the changes?

Trade Unions will be given more power as they will be granted regulated access to workplaces to try and recruit new members and employer's will be required to regularly remind workers of their right to join a trade union.

Unfair Dismissal: Currently, employee's cannot claim unfair dismissal until they have been with the company for 2 years. One of the planned changes is to ensure employees are protected from unfair dismissal from the day they start.

Zero-hour Contracts have made the headlines for a number of years and the government are committed to banning this type of contract. Employee's will be entitled to an 'average hours contract' based on a 12 week period. They will also be entitled to a reasonable period of notice for any work schedules and fair compensation for any cancelled shifts.

National Minimum Wage for young workers will be amended. At the moment, 18 to 20 year olds are subject to a lower National Living Wage but the same rate will apply to all ages.

Sick Pay will also be payable on the first day of absenteeism, rather than the current requirement of 3 days before it applies.

HOW COULD THESE CHANGES AFFECT YOU?

Trade Unions may rejoice at having more power but it will be bad news for businesses. An increased presence at workplaces and a drive to recruit more members means that small thorn in your side may feel more like a dagger if they take issue with how you operate.

Trade Unions do not like the use of self-employed workers and this expansion will undoubtedly result in an increase in employment related claims.

Unfair dismissal from day 1 will make it even less appealing to employ new workers. It will become more difficult and costly to terminate a contract. It is also another thing for self-employed workers to add to a claim if they challenge their employment status.

Zero-hour contracts being banned is understandable where workers are being exploited, but where they are used appropriately they do allow businesses flexibility. It is foreseeable that banning these employment contracts will result in more individuals being engaged on a self-employed basis instead. A requirement for an average hours contract could be riddled with problems and be unworkable in some sectors.

Increasing National Living Wage for young workers may sound good for those ages 18–20 but it is also a disincentive for employer's to employ young people rather than recruiting an older more experienced worker for the same cost.

SSP from day 1 will represent an additional cost to business and may be particularly harmful for smaller businesses.

If employee's know they will be entitled to SSP from the first day they are off, it may mean some are less inclined to come into work.



EMPLOYMENT STATUS

CHANGING THE LAW



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TO BE CONTINUED...

DEPENDANT CONTRACTOR

Changing the law on what makes someone self-employed is something that has been considered for many, many years by consecutive governments but this is no easy task and no satisfactory outcome has yet been found.

There was talk of changing the rules for 'dependant contractors', i.e. **those that earn most of their money from one source**, but the government have confirmed that any such change will require further consideration and should not be rushed through.

Individuals and businesses work in such a multitude of ways that it is very hard to change the law without it having unintended consequences or without it becoming easy to side-step.

Any move away from the established case law principles of self-employment will have a seismic impact on the number of people who could be classed as self-employed and would have a dramatic impact on industries such as construction.

For now, it looks as though the status quo will remain the same, but **watch this space as it is likely to be revisited by the government soon!**



TAXPAYER CAUGHT OFFSIDE NOW EVERYONE WILL BE

HMRC v PGMOL (football referees)

The Supreme Court is the highest in the land and its judgments are binding on all the lower courts. That is precisely where this case ended up and why it is such an important case.

PGMOL provides professional referees for football matches who were engaged on a self-employed basis. HMRC believe they should have been on PAYE.

PGMOL were under no obligation to offer the referees any work and they were free to decline it (until they arrived at the football ground). Sound familiar? that's because it is a standard argument to support the view that someone is self-employed. A classic example of this being a construction company who are under no obligation to offer subcontractors work, who in turn are under no mutual obligation to provide services.

The Supreme Court held that it did not matter that the applicant had been under no obligation to accept an assignment. This means it will be much more difficult going forward to rely on this type of argument as to why someone is self-employed.

How else can you prove someone is self-employed? A lack of control is also a key measure of this but the Supreme Court also confirmed that the threshold for there being control is low and easily met and can take into account incidental and collateral matters.

Collectively this is bad news for anyone directly engaging subcontractors. As case law principles are tightened, it not only becomes harder to convince HMRC that workers are self-employed but it will be even more difficult to win at the tribunals. Even if you do win at the tribunal, HMRC are having a lot of success at getting first-tier tribunal decisions overturned.

A VERY REAL HUMAN COST

HMRC v Basic Broadcasting (Adrian Chiles)

It will take four separate tribunal hearings to resolve this IR35 case. The Judge in the IR35 case involving TV Presenter Adrian Chiles laid bare the time, energy and emotional cost involved in defending an HMRC enquiry:

“The toll which this prolonged appeal process has already taken on Mr Chiles is significant...This has caused us great concern, both at the hearing and subsequently, in relation to procedural unfairness.”

“the uncertainty and financial exposures generated by the difficulty in establishing a clear and stable legal position continue to produce a very real human cost.”

The judge also referred to the complexities of the law where it is in a state of flux where principles are still evolving even though they were introduced in 1947. He continued:

“Presented with this moving target, taxpayers and their advisers must nevertheless grapple with whether the legislation applies to any particular engagement, and the courts and tribunals must do the same”

HMRC TOUGH TO TACKLE

HMRC v SL Barnes (the Voice of Rugby)

Ex Rugby Player, turned commentator Stuart Barnes missed out on a conversion when he was taken to the tax tribunal for a second time and lost, after winning the initial hearing.

The interesting part of this case was that Mr Barnes was **free and even encouraged to work for other organisations** and the tribunal found that outside of his contract with Sky, **he was in business on his own account**. This would usually mean that someone is self-employed.

The Judge found in this case however that being ‘in business’ outside of the relevant contract was a **relevant factor, but nothing more**.

He was therefore deemed to be an employee for tax purposes.



WHAT IS IT LIKE BEING CHALLENGED BY HMRC?

THE ADRIAN CHILES CASE GOES SOME WAY TO EXPLAINING THE IMPACT OF AN HMRC ENQUIRY. BELOW IS A FIRST HAND ACCOUNT OF WHAT IT IS LIKE TO BE UNDER HMRC SCRUTINY.

“It has been the most mentally draining, stress inducing, period of my life. I have no idea what the lasting effects on me will be, except to say that constantly living with the fear of what might happen has resulted in a permanent state of background anxiety. There have been days when I have felt depressed, worried, bullied and overwhelmed.”



“Straight from the off, it felt like their attitude was that I was guilty, until proven innocent. It’s been an incredibly frustrating, stressful, insidious and unpleasant process, which still hasn’t concluded – almost 7 years since it began.

In total, over 260 questions were asked, for which I had to give detailed written responses. Lots of the questions were repetitive, asking the same thing in a slightly different fashion. It felt like they were trying to find a way to trip me up.

The fundamental issue from my perspective was that there was a total lack of understanding as to how my industry works, and a refusal to accept what I was telling them. HMRC simply refused to accept any of my arguments or evidence.

The worst thing about the whole process was that it was glacially slow. HMRC would take forever to get back to us or make decisions.

There was no way I was prepared to go to a tribunal – win or lose, it would have been damaging to my professional reputation, as well as potentially very costly financially, and I had already paid out thousands of pounds to defend myself.

It had got to the stage where there was no point fighting with an organisation that simply refused to budge from it’s original position, regardless of what was said to refute that. Their stubbornness was breath taking.”

Don't suffer at the hands of HMRC

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HOW WOULD YOU PROVE THEY ARE SELF-EMPLOYED?

They work for other people

Employees can have multiple jobs. Just because they work for other people, does not mean when they are providing services to you, they are self-employed. *See SL Barnes case!*

They have a UTR number

Anyone can register for self-assessment. Having a UTR does not mean someone is self-employed, just that they can complete tax returns.

They only work for me for short periods of time

An employee can quite easily be taken on, on a short term, flexible or a zero hour contract. Working for a short time does not mean someone is self-employed

They are under no obligation to work

The Supreme Court in HMRC v PGMOL in 2024 confirmed that being under no obligation to work, does not matter.

I have little control over them

The Supreme Court have again confirmed that even control over incidental matters can still be enough control for an employment relationship

I have a good contract

A contract can be very helpful in establishing someone is self-employed but it must be well written, remain accurate and up to date. HMRC will scrutinise the contract and try and find any inconsistencies with how you operate.



The law is very complicated and unclear, and it is easy to get caught out. Know where you stand and have confidence over using subcontractors.
