



The Gig Economy and Driver Employment Status

What it's all about and why does it matter?

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Topics for Today's Session

- Overview of the different types of employment status
- Ascertaining the employment status of your flexible workforce
- Why does employment status matter?
- Practical tips to reduce the risk of employment tribunal claims and HMRC investigation



Employee, Worker or Self-Employed?

- Employee
 - Works under an employment contract for a salary under the control and supervision of an employer
- Self-Employed
 - In business on their own account and provides their services independently
- Worker
 - Generally someone who has a contract or agreement for work or services with a more casual or less structured arrangement such as irregular hours. Regarded as a hybrid status, encompassing aspects of employment and self-employment.



Key Rights for Each Type of Employment Status

	Employee*	Worker*	Self-employed
National Minimum Wage	✓	✓	
Paid holiday	✓	✓	
Rest breaks	✓	✓	
Discrimination protection	✓	✓	Sometimes
Whistleblowing protection	✓	✓	Sometimes
Not to be treated less favourably if working part-time	✓	✓	
Statutory sick pay	✓	✓	
Statutory maternity/ paternity/ adoption pay and shared parental pay	✓	✓	
Right to pension contributions	✓	✓	
Minimum notice period	✓		
Protection against unfair dismissal	✓		
Right to request flexible working	✓		
Time off for emergencies	✓		
Statutory redundancy pay	✓		
Health and safety protection	✓	✓	✓
Right to collective bargaining	✓	✓	

**Some of these rights require a minimum length of continuous service before entitlement arises.*

High Profile Employment Tribunal Claims

- Providing clarity or just muddying the waters?
- Latest Supreme Court appeal judgement issued on 21st November 2023: Deliveroo vs the unions



Key Indicators of Status

	Employee	Worker (only relevant for employment law status*)	Self-employed
True right of substitution (i.e. driver can send someone else to carry out the work)			✓
Driver has real choice over which jobs they accept			✓
Business closely controls driver's work (what work they do and when they do it)	✓	✓	
The business provides the vehicle, equipment, facilities and/or uniform required to do that work	✓	Possibly	
Driver chooses own route(s)			✓
Driver is allowed to work for more than one client	Possibly	Possibly	✓
Driver is responsible for the success or failure of their business			✓
Business agrees a fixed price for the driver's work – it doesn't depend on how long the job takes to finish			✓
Driver is responsible for fixing any unsatisfactory work in their own time			✓

**From HMRC's perspective, there is no distinction between employees and workers. Drivers are either employed or self-employed. Although IR35 tax status won't necessarily mirror employment status, it's worth being aware of the latest employment decisions on employment status when considering tax status.*

Incorrect Employment Status: Why Does It Matter?

- HMRC investigation
- Employment tribunal claim
- Reputation



Practical Tips to Avoid Employment Tribunal Claims and HMRC Investigation

- Facts first; status second

<https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-employment-rights-guidance-for-hr-professionals-legal-professionals-and-other-groups>

- Ensure your driver contracts are properly drafted and match your operational practices
- Build questions of employment status into your review cycle
- Maintain an open dialogue with your drivers and trade unions



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