



### Nicky Ackerley BA(Hons)

Nicky is the owner of HR Support Consultancy. She has a BA(Hons) in Business Studies, is a member of the Chartered Institute of Personnel and Development and has been a practising HR manager for more than 20 years. HR Support Consultancy has provided the BVNA Members Advisory Service (formerly known as the Industrial Relations Service) since it began in 2002.

# Self-employed or employed?

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When you are employed you have an employment relationship with your employer. You might think it is quite straightforward to determine the nature of your employment relationship and for many people it is, you turn up for work when you are required, and you do the job you are told to do. Your employer pays your tax through PAYE and you get paid holidays and either sick pay or statutory sick pay (if you earn enough) and your employer pays Employers National Insurance contributions for you.

An employer is required by law to account for Income Tax and National Insurance Contributions via the PAYE system.

A self-employed worker is responsible for looking after their own tax and National Insurance Contributions and any VAT affairs.

Some of the differing working arrangements include Fixed Term Contracts, Agency Workers, Employees, Casual Workers (can be employed or self-employed), Locums, Consultants and Contractors.

An employee has employment rights that a self-employed person doesn't enjoy.

These can include:

- Right to be treated fairly
- Right to claim unfair dismissal
- Right to claim redundancy payments
- Right to written statements or contract
- Protection under Employment Rights Act, Wages Act, Working Time Regulations and others.

If you are self-employed you might have an agreement with the employer, but this is not an employment contract. You are likely to submit an invoice for your services on a periodic basis, you probably work for several people over a period of time, you need to bring your own equipment or tools to work and you are not entitled to paid holidays.

It is possible to be employed and self-employed at the same time – you might be working for someone during the day and running your own business in the evenings for example.

It is not always straightforward to determine whether an individual is employed or self-employed.

One of the most important differences is whether the worker has the right to send a substitute to the employer if needed, if you can do this it is likely that you are self-employed. An Employment Tribunal ruled that a requirement of personal service is essential in an employment contract and therefore a contract which permitted a substitute to be sent could not be a contract of employment and therefore had to be a consultancy agreement.

One of the key aspects of employment is the mutuality of obligation. Does the individual have an obligation to work at the practice and does the practice have an obligation to offer work? If the working arrangements in place reflect this there is likely to be an employment relationship. It is important to remember the law is not so much concerned about the label that is used by the parties but by the working practices.

HMRC use a comprehensive check list to determine if an individual is employed or self-employed. It is important to determine the correct employment relationship, and sometimes over time these relationships can change – so don't get caught out.

Contact the BVNA Employment Advice line if you would like any assistance with this or any other employment matter.

For further support with this or any other HR issue, BVNA members can call the BVNA Advisory Service Helpline on 01822 870270 or email [nickyackerley@hrsupportconsultancy.co.uk](mailto:nickyackerley@hrsupportconsultancy.co.uk)