Contract Of Service & Contract For Service

The law makes a distinction between a ***contract of service*** and a **contract for service**. Basically, a contract for service applies to an employee-employer relationship, while a contract for service applies in the case of an independent sub-contractor. This distinction is most important as the protection of most employment legislation does not apply to independent sub-contractors.

The Table below summarises the essential differences between the two sorts of contract.

The essential differences between the two sorts of contract.

Contracts Of Service	Contracts For Service
Employer – Employee relationship.	Employer-Independent Contractor relationship.
Usually a continuous relationship.	A relationship organised around the completion of a once off piece of work.
A duty of care owed to employees as the employer.	A duty of care arising from occupiers' liability.
The employer is generally liable for the vicarious acts of employees.	The employer is generally not liable for the vicarious acts of independent contractors.
Protective legislation applies to the contract.	In general, employment legislation does not apply (Safety Health and Welfare at Work 1989 – 2005 and the Employment Equality Acts 1998 – 2015.
Wages/Salary payment method.	Various methods of payment, including lump sum per job.
Subject of contract is to carry on continuous work.	Subject of contract is once-off job.

Adapted from P. Gunnigle, G. McMahon & G. Fitzgerald, *Industrial Relations In Ireland; Theory & Practice, (Gill & Macmillan, Dublin, 1992), p. 37.*

How Do Courts Differentiate Between Contracts Of Service & Contracts For Service?

Courts have applied the tests of *control, integration* and *multiple or mixed*.

The ***control test*** simply asks the question can the employer tell the employee what to do? In other words, is the employee under the control of the employer?

The ***integration test*** asks to what extent is the employee's work integrated into the business? Someone brought in on contract to repair or maintain plant or premises may not be integrated in any way into normal operations.

The ***multiple or mixed test*** asks a series of questions such as are there wages, sick pay and holiday pay? If there are, who pays them? Are PAYE and PRSI deducted? Does the worker share in the company's profits and losses? Who provides the tools and equipment for the job? Is the employer entitled to exclusive service from the employee? A court's interpretation will not necessarily depend upon what it says in the contract – labels will themselves not determine the matter, the courts will decide.

In short, is this a case of genuine self-employment or an attempt by an employer to avoid employment legislation?

Code Of Practice For Determining Employment Or Self-Employment Status Of Individuals

The Employment Status Group set up under the Programme For Prosperity and Fairness (PPF) in 2007 attempted to answer this question and produced a Code Of Practice. This code has since been updated by the Hidden Economy Monitoring Group set up under the Towards 2016 Social Partnership Agreement.

The code attempts to eliminate misconceptions and provide clarity. In most cases, it is clear whether or not someone is genuinely self-employed. If it is not, the criteria contained in the code should provide answers. It is important that the job as a whole is looked at including working conditions and the reality of the relationship.

The overriding consideration or test will always be whether the person performing the work does so 'as a person in business on their own account'. Is the person a free agent with an economic independence of the person engaging the service?

The Code Of Practice is reproduced here and would be the measure against which the facts of any case in dispute would be gauged by an industrial relations tribunal.

Criteria On Whether An Individual Is An Employee

While all of the following factors may not apply, an individual would normally be an employee if s/he –

- is under the control of another person who directs as to how, when and where the work is to be carried out;
- supplies labour only;

- receives a fixed hourly/weekly/monthly wage;
- cannot sub-contract the work. If work can be sub-contracted and paid on by the person sub-contracting the work, the employer/employee relationship may simply be transferred on;
- does not supply materials for the job;
- does not provide equipment other than the small tools of trade. The provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a particular case;
- 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 extra pay or time off for overtime.

Additional Factors To Be Considered

- an individual could have considerable freedom and independence in carrying out work and still remain an employee;
- an employee with specialist knowledge may not be directed as to how the work is carried out;
- an individual who is paid by commission, by share, or in 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 do not work on the employer's premises;
- there are special PRSI rules for the employment of family members;
- statements in contracts considered by the Supreme Court in the Denny Case such as 'you are deemed to be an independent sub-contractor', 'It shall be your duty to pay and discharge such taxes and charges as may be payable out of such fees to the Revenue Commissioners or otherwise', 'It is agreed that the provisions of the Unfair Dismissals Act, 1977, shall not apply, etc', 'You will not be an employee of this company', 'You will be responsible for your own tax affairs', are not contractual terms and have little or no contractual validity. While they may express an opinion of the contracting parties they are of minimal value in coming to a conclusion as to the work status of the person engaged.

Criteria On Whether An Individual Is Self-Employed

While all of the following factors may not apply to the job, an individual would normally be self-employed if s/he –

- owns her or his own business;
- is exposed to financial risk by having to bear the cost of making good faulty or sub-standard work carried out under the contract;

- assumes responsibility for 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 s/he does it personally;
- is free to hire other people, on her/his own 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 her/his own insurance cover, e.g. public liability cover, etc;
- controls the hours of work in fulfilling the job obligations.

Additional Factors To Be Considered

- generally an individual should satisfy the self-employed guidelines above, otherwise s/he will normally be an employee;
- the fact than an individual has registered for self-assessment or VAT under the principles of self-assessment does not automatically mean that s/he is self-employed;
- an office-holder, such as a company director, will be taxed under the PAYE system. However, the terms and conditions may have to be examined by the Scope Section of the Department Of Social Protection to decide on the appropriate PRSI Class;
- it should be noted that a person who is a self-employed contractor in one job is not necessarily self-employed in the next job. It is also possible to be employed and self-employed at the same time in different jobs.

Consequences Arising From The Determination Of An Individual's Status

The status as an employee or self-employed person will affect –

- the way in which tax and PRSI is payable to the Collector-General. An employee will have tax and PRSI deducted from her/his income. A self-employed person is obliged to pay preliminary tax and file income tax returns whether or not s/he is asked for them;
- entitlement to a number of social welfare benefits such as jobseekers and disability benefits. An employee may be entitled to jobseekers, disability and invalidity benefits, whereas a self-employed person will not have these entitlements;
- other rights and entitlements, for example, under employment legislation. An employee will have rights of working time, holidays, maternity/parental leave, protection from unfair dismissals, etc. A self-employed person will not have these right and protection;
- public liability in respect of the work done.

Deciding Status – Getting Assistance

Where there are difficulties in deciding the appropriate status of an individual or groups of individuals Local Revenue Office or Local Social Welfare Office can provide assistance. The. Scope Section in the Department Of Social Protection may also be contacted for assistance.

Having established all of the relevant facts, a written decision as to the status will be issued. A decision by one Department will generally be accepted by the other, provided all relevant facts were given at the time and the circumstances remain the same and it is accepted that the correct legal principles have been applied to the facts established. However, because of the varied nature of circumstances that arise and the different statutory provisions, such a consensus may not be possible in every case.