



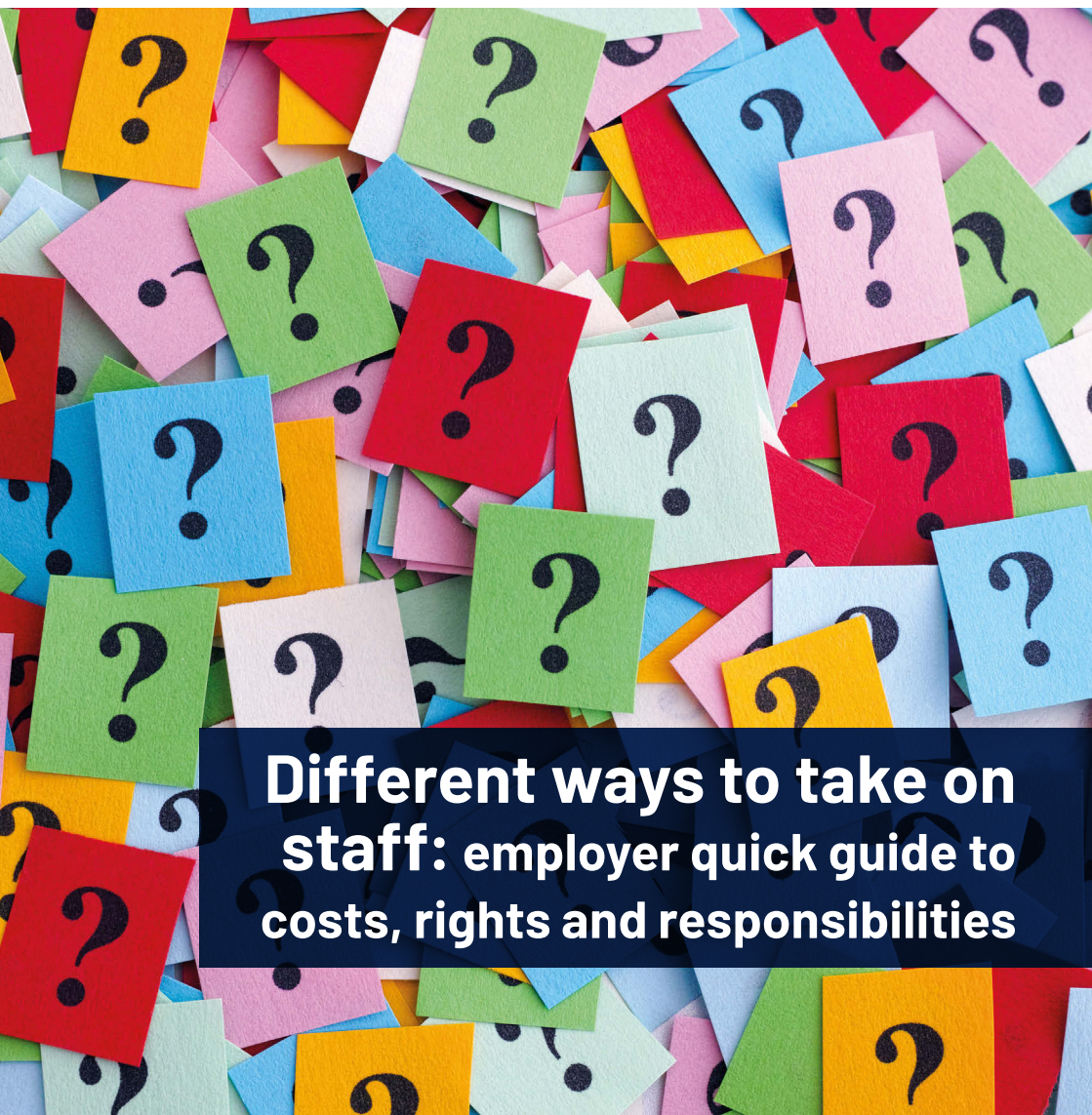
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**Different ways to take on  
staff: employer quick guide to  
costs, rights and responsibilities**

# With the pressure of increased costs, employers need to be on top of all available options when it comes to taking on staff.

There are different ways of engaging people to work in a business, and the difference matters. Different working arrangements bring different employment rights, and different employer responsibilities.

## Looking at options

In the past, options were clear. On the one hand, there were employees: on the other, there were the self-employed. But the modern workplace has changed with the development of new ways of working. In this publication, we look at the traditional options, and new, more flexible working arrangements, outlining the key tax and compliance points you need to know.

## Understanding employment status

Compliance hinges on understanding what's called employment status. This means correctly classifying the working relationship between you (the person providing work) and the person who does the work. This is what determines your responsibilities in employment law and the employment rights the other person has. It also determines your responsibilities to HMRC.

Getting employment status right is important because it will help you avoid the financial consequences, such as liability for unpaid tax, or penalties that can attach where things go wrong — as well as the danger of reputational damage.

### Need to know: two sets of rules

There are two different sets of rules to consider: employment law and tax law. Employment law covers statutory rights like pay, holiday entitlement, maternity and paternity leave, and working hours. Tax law governs how Income Tax and National Insurance Contributions (NICs) are collected.

### In employment law, there are three types of employment status:

- employees

- workers
- the self-employed.

### In tax law there are two types of status:

the self-employed and employees. The self-employed are taxed under self assessment, and employees taxed under PAYE.

Confusingly, it's possible for someone to have one status in employment law, but a different status for tax purposes. This can be a danger zone for employers, and you need to be sure you are compliant on both counts, correctly categorising the status of anyone working for you for employment law **and** for tax purposes.

## Traditional arrangements

### Employees

**Advantages:** Traditional means of providing a stable workforce.

**How to recognise:** An employee is someone who has entered, or works under a contract of employment, according to the Employment Rights Act 1996. In an employment relationship, employers are obliged to provide work. They also have control over what is done. Employees are obliged to accept the work, in return for pay, and to carry it out in person. Working arrangements fit a traditional profile, with regular work carried out, either full or part-time, and the employment contract providing a high level of certainty over where, when and how work is done.

**Minimum wage:** All employees, without exception, are entitled to at least the appropriate hourly minimum wage.

**PAYE:** From April 2025, if you pay someone more than £96 per week (what's called the secondary threshold), you need to register as an employer with HMRC, and set up a PAYE scheme. You must also do so if the employee has another job or pension; or receives employee benefits or expenses. Even if you don't need to register with HMRC, you will need to keep records of pay and provide payslips.

**Employment law:** Employees have legal rights, sometimes after a minimum period of employment. The Employment Rights Bill, currently going through parliament, will increase these significantly, with more day one rights, such as new day one protection against unfair dismissal. Details are still being finalised, and most measures are not expected to take effect before 2026 at the earliest. Employers also have duties under the auto-enrolment pensions regime.

## The self-employed

**Advantages:** Using self-employed workers gives a business considerable flexibility. They are responsible for their own tax and NICs, don't fall under the minimum wage rules, and don't have the employment rights that employees have. But it's essential that self-employment is genuine. You can't simply use the label because it's convenient.

**How to recognise:** It isn't always easy to decide if someone is employed or self-employed, and it is important to check the reality of the underlying working arrangements. This is likely to mean looking not just at their working relationship with you, but also at any other work they do.

Tax law sets out indicators known as the badges of self-employment. They include someone:

- being in business on their own account, responsible for the success or failure of their work
- working for more than one client
- being able to decide what work is done: when, where and how they do it
- being able to hire someone else to do their work if they choose
- being responsible to fix unsatisfactory work in their own time
- agreeing a price for work
- using their own money to provide business equipment.

**Check:** HMRC has an online employment status checker tool, known as CEST, which can be used anonymously by hirers, workers, or agencies/other third parties to give assurance

on engagements. It runs users through a series of questions to help them decide if someone should be classed as employed or self-employed for tax purposes.

HMRC will stand by the results given, so long as the information provided is accurate and in accordance with its guidance. CEST has its limitations, but it can be a good way of demonstrating that you are trying to comply with your obligations.

**Tax:** Someone genuinely self-employed is responsible for their own Income Tax and NICs. But it can't be overemphasised how important it is to be sure that employment status is correctly decided.

As far as HMRC is concerned, someone is either an employee or self-employed. There is no third option. If it considers that an employer has treated someone as self-employed when they are really an employee, the employer could be held liable for unpaid employer NICs, employee NICs and Income Tax, and possibly interest and penalties.

**Employment law:** The self-employed have very few rights.

**Need to know:** It's common to use all sorts of terms in everyday speech, like freelancer, consultant and contractor, but it should be remembered that these are not types of employment status. For employment law, there are only three categories: self-employed, employee or worker. And for tax, there are just two: self-employed or employee.

## Alternative ways to take on staff

### Workers

**Advantages:** Using workers rather than employees can give flexibility around costs and staffing levels.

**How to recognise:** Workers have fewer rights and less security than employees: and less control over their work than the self-employed. Like employees, workers have entered a contract, and are required to perform their work or services in person. They are likely to provide a service, or work as part of someone else's business, rather than being in business

on their own account. The person engaging them is not considered their customer or client. Workers typically operate on a more casual basis than employees, perhaps job by job, and are free to turn down work. There is no responsibility for the business to offer them work, and they are unlikely to have guaranteed or regular hours. Their contract may use terms like casual, freelance, or zero-hours.

**Minimum wage and tax:** Workers are entitled to minimum wage. For tax, there is no such thing as worker status. It is necessary to decide whether the worker is an employee or self-employed.

**Employment law:** Workers have rights, including the statutory minimum level of paid holiday. They may also be entitled to Statutory Sick Pay; Statutory Maternity Pay and other family related rights. Workers are entitled to a written statement of terms and conditions; an itemised payslip; and if other eligibility conditions apply, to pension contributions under the auto-enrolment scheme.

**Need to know:** Compliance requirements for employers are changing significantly. The new Employment Rights Bill, for example, includes provisions for employers to offer guaranteed hours to zero or low hours workers in certain situations. The government is also extending the relationships caught by the illegal working regime, requiring right to work checks for a wider range of people, such as workers, subcontractors and platform workers. It also plans to move towards a system with just two types of employment status: workers and the self-employed, though there is no timeline for this yet.

### **Off-payroll working/IR35 regime**

**Advantages:** Engaging staff covered by the off-payroll/IR35 regime can give flexibility.

**Tax and compliance:** From HMRC's perspective, it's all about making sure that someone providing their services through their own intermediary, often a personal service company (PSC) pays broadly the same Income Tax and NICs as an employee.

To do so, there are requirements about who decides the worker's employment status. Where a medium or large-sized private sector client, or public sector client (regardless of size) engages such a worker, the off-payroll working rules apply and the end client makes the employment status decision. Where the engagement is with a small client, the IR35 rules apply, and the worker's intermediary decides. In all cases, client size is determined by criteria in the Companies Act 2006.

If the worker is considered not genuinely to be in business on their own account, adjustments must be made to account for Income Tax and NICs. We can help you navigate the complex rules.

**Need to know:** New thresholds to determine company size will have knock-on consequences for who makes employment status decisions under the off-payroll and IR35 rules. In most cases, the impact of this will be felt from April 2027. We can advise further here.

### **Apprentices**

**Advantages:** Apprenticeships can be a useful way to take on staff, or build skills within a business, and there is funding available to help pay for apprenticeship training.

**Pay and compliance:** Special minimum wage rules apply. There may also be specific rules on NICs to consider. An apprenticeship requires a combination of on the job training and study. There are various levels of apprenticeship, each with an equivalent educational level. From January 2026, government funding will shift from Level 7, masters-level apprenticeships, towards apprentices aged 16-21. Apprentices have rights to the same conditions as employees working at similar grades, including paid holidays and sick pay.

### **Here to help**

In short, different ways of taking on staff come with different responsibilities and different cost profiles, so the choices you make matter. Please contact us for an in-depth discussion.