

Suite 908**THE EMPLOYER/LABOR AND THE LAW*****The Employer and the Law
Labor and the Law***

Please note that the information provided herein is not intended to be absolute. It is a compilation of information which has been harmonized to adhere to the foundation of principles as put forth by The UN, the United States and the Commonwealth so it is important that you should check current details with your particular government.

908.01 WHO IS AN EMPLOYEE?

Case law, particularly regarding casual and agency workers, is still evolving. For income tax and National Insurance contribution purposes, workers provided by an agency are treated as employees of the agency.

There is no precise formula clarifying who is an employee, who is a worker and who is self-employed. However, there are four key tests the courts will consider:

- **Direction and Control** - Whether you as an employer can instruct them how and which tasks to perform
- **Integration** - whether they are part and parcel of your organisation
- **Mutuality of obligations** - whether you are required to offer work and they are expected to do it
- **Economic reality** - whether they are in a business on their own, eg where they bear the financial risks of failure to deliver the service

Recent trends have been towards the application of a “composite test” which takes account of all relevant factors. However, the law is complex and you should take advice if you are unsure of the employment status of someone who works for you.

As an employer, it is essential you know about the following issues and how the law deals with them:

- Terms of employment
- Redundancy – Payments
- Insolvency
- Pregnant women – maternity rights, parent leave, time off for dependants
- Sick leave
- Health and Safety
- Union membership
- Itemised pay statements
- Continuous employment
- Time off for public duties
- Unfair dismissal

- Right on ending employment – Dismissal
- Sub-contracting
- Industrial action ballots
- Discrimination – sex, racial, disability
- Equal pay
- Picketing – Code of Practice

Employees vs. Contractors – What's the Difference?

In the United States the Internal Revenue Service relies on the facts in each case. It does not recognize the validity of any written agreement between the parties. Anyone can get a ruling from the IRS by completing Form ss-8.

Whether a person is an independent contractor or an employee generally depends on the amount of control exercised by the employer over the work being done. Dictating how a job is to be done or limiting the actions of the worker may establish an employer-employee relationship.

An independent contractor:

- Operates under a business name
- Has her own employees
- Maintains a separate business checking account
- Advertises her business's services
- Invoices for work done
- Has more than one client
- Has own tools and sets own hours
- Keeps business records

An employee:

- Performs duties dictated or controlled by others
- Is given training for work to be done
- Works for only one employer

For most small businesses, independent contractors should not be considered as substitutes for regular employees. Government agencies generally find that people in the work force are legally employees for tax purposes and the cost of being wrong, remitting unpaid payroll taxes, interest and penalties can be very high.

908.02 AM I LEGALLY CLASSED AS SELF-EMPLOYED?

Whether you can be classed as self-employed – opposed to an employee or a worker – often depends on the level of your independence.

Although there is no individual test that is decisive, you're likely to be classed as self-employed if you:

- Have the final say in how your business is run
- Risk your own money in the business
- Are responsible for the losses as well as profits of your business

- Provide the main items of equipment you need to do your job
- Are free to hire other people on your own terms to do the work you have taken on and pay them at your own expense
- Are responsible for correcting unsatisfactory work in your own time and at your own expense

You can be employed and self-employed at the same time. For example, you may work for an employer during the day but run your own part-time business in the evening.

In the United Kingdom you must tell HM Revenue & Customs you are self-employed within three months of the end of the calendar month in which you became self-employed. If you don't, you could face a penalty.

The law is complex and there are no hard-and-fast definitions of self-employment.

Special rules apply for contractors and subcontractors in the construction industry. If you sell your own services through a third party, such as a limited company or partnership, IR35 rules may apply.

You should take advice if you are unsure of your employment status or that of someone who works for you.

908.03 EMPLOYMENT STATUS OF COMPANY DIRECTORS

Executive directors of limited companies, as office holders, are classed as employees of the company. Class 1 employee and employer National Insurance contributions (NICs) must be paid, the directors are taxed through PAYE (Pay As You Earn) in the same way as other employees and they have the same rights under employment law as employees.

Non-executive directors may be regarded as employed by the company or self-employed under a contract for services, depending on the terms and conditions of engagement.

However, regardless of their executive or non-executive status, company directors have a number of additional responsibilities under company law and in relation to the completion of self-assessment tax returns.

Self-employed people who convert their business to a limited company usually become directors of the company as well as employees of the company.

The law is complex and you should take advice if you are unsure of your employment status or that of someone who works for you.

There are special rules that apply to contracts where individuals provide their services to a client through a third party, such as their own limited company or partnership. Special rules also apply to contractors and self-employed subcontractors in the construction industry.

In the United Kingdom legislation commonly known as IR35 brings the tax paid on certain contracts in line with the tax paid by employees. As an employer, you do not make deductions for PAYE or NICs from payments made under such a contract to an “intermediary”.

908.04 CONTRACTORS AND SUBCONTRACTORS

In the Construction Industry

One alternative to employing directly is to sub-contract some work. This may be more cost effective in ironing out short-term trading highs and lows, and might alleviate some of the responsibilities of an employer. However, legal responsibilities can arise in this respect, for example the transfer of undertakings regulations. You may need professional help in respect of such matters.

There is a special tax scheme for self-employed contractors and subcontractors working in the construction industry. It does not apply to employees, who should be dealt with under the PAYE system.

The following are informative websites for UK citizens:

HM Revenue & Customs:

<http://www.hmrc.gov.uk/manuals/esmanual/esm0500.htm>

<http://www.inlandrevenue.gov.uk/manuals/esmmanual/index.htm>

Companies House – responsibilities of Company Directors

<http://www.companieshouse.gov.uk/about/gbhtml/gba1.shtml#two>

LABOR AND THE LAW

908.05 ADMINISTRATION

Broadly speaking, your relationship with your employees depends on your personal approach. But administration is what you actually do. Of course, they are often difficult to keep separate.

Maintaining accurate and up-to-date staff details is a prerequisite to all your dealings with employees. Apart from confidential persona details, records should also be kept of complaints, reviews and appraisals.

Employing people – issues to address

- Determine the exact skill needed, working hours and the wage you will offer.

- Work out a simple application form for candidates to fill in before you see them.
- When interviewing, give candidates exact written details of the job. You can learn more this way and it helps you to structure the interview.
- Sleep on it.
- Sleep on it for a bit longer, after telling the candidates when you will make the decision
- Once you have decided, draw up the contract.
- Include a clause which will let you end the contract after a trial period.
- It is against the law to discriminate against candidates because of their race, colour, nationality, ethnic origins, sex or marital status.
- Make sure you are working within health and safety regulations. Contact the Health and Safety Executive for information about safety standards, and to arrange a site visit by one of their officers.
- Do you know your own rights and your employees' rights concerning trade unions?
- Do you know the rules about dismissing an employee?
- You cannot sack someone of the spot unless you have a very good case.
- You must take tax and National Insurance contributions from your employees' wages and send the money to your local Tax Office, following instructions the Inland Revenue will give you.

Glossary of NATIONAL LABOR RELATIONS BOARD TERMS

- **Charge** – An allegation made by an individual, employer, or labor organization of an unfair labor practice under the Act. Charges are filed at NLRB's regional offices.
- **Complaint** – If, after investigating a charge, the regional office finds merit and no settlement is reached, the Regional Director serves a complaint in the name of the Board stating the unfair labor practices and containing a notice of hearing before an Administrative Judge. The complaint does not constitute a finding of wrongdoing, but raises issues to be decided by the judge.
- **Administrative law judge** – As with other federal agencies (such as the Labor Department or Social Security Administration), the NLRB has a corps of Judges who conduct hearings at which the parties present evidence. These judges work for the NLRB (i.e., they are not federal district court judges). Decisions of Administrative Law Judges can be appealed to the five-member Board in Washington, D.C.
- **Good faith bargaining** – Section 8(d) of the Act states in part: "To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession...."

- **Impasse** – A deadlock in negotiating between management and officials over terms and conditions of employment. Whether and impasse bargaining exists “is a matter of judgement,” the Board said in its 1967 decision in *Taft Broadcasting Co. v. AFTRA*, and
- depends on such factors as “bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, and the contemporaneous understanding of the parties to the state of negotiations.”

In the United States:

What Are Employment Taxes?

Small business owners often have great responsibilities while operating and managing a business. Before you become an employer and hire employees, you need a Federal Employer Identification Number (EIN).

If you have employees, you are responsible for several federal, state, and local taxes. As an employer, you must withhold certain taxes from your employees pay checks. Employment taxes include the following:

- Federal income tax withholding
- Social Security and Medicare taxes
- Federal unemployment tax act (FUTA).
- State Unemployment Taxes

Federal Income Taxes/Social Security and Medicare Taxes

You generally must withhold federal income tax from your employee’s wages. To figure how much to withhold from each wage payment, use the employee’s Form W-4 and the methods described in Publication 15, *Employers Tax Guide* and Publication 15-A, *Employers Supplemental Tax Guide*.

Social Security and Medicare taxes pay for benefits that workers and families receive under the Federal Insurance Contributions Act (FICA). Social security tax pays for benefits under the old-age, survivors, and disability insurance part of FICA. Medicare tax pays for benefits under the hospital insurance part of FICA. You withhold part of these taxes from your employee’s wages and you pay a matching amount yourself.

Which form do I file to report federal income Taxes, Social Security, and Medicare taxes?

- Form 941, *Employer’s Quarterly Federal Tax Return*
- Form 943, *Employer’s Annual Federal Tax Return for Agriculture Employees* (for use by farm employers).

Federal Unemployment (FUTA) Tax

The federal unemployment tax is part of the federal and state program under the Federal Unemployment Tax Act (FUTA) that pays unemployment compensation to workers who lose their jobs. You report and pay FUTA tax separately from social security and Medicare taxes and withheld income tax. You pay FUTA tax only from your own funds. Employees do not pay this tax or have it withheld from their pay. Report FUTA taxes on Form 940, Employer's Annual Federal Unemployment (FUTA) tax return or if you qualify, you can use the simpler Form 940-EZ instead.

Depositing Taxes

In general, you must deposit income tax withheld and both the employer and employee social security and Medicare taxes (minus any advance EIC payments) by mailing or delivering a check, money order, or cash to a financial institution that is an authorized depository for Federal taxes. However, some taxpayers are required to deposit using the Electronic Federal Tax Deposit System (EFTPS).

You may find all your forms on:

<http://www.sba.gov/library/forms.html>

In the United Kingdom:

The British Government provides - New Employers Starter Pack

A New Employer's Starter Pack is issued within two working days of registering with the New Employer's Helpline. It includes a copy of the Employer's CD-ROM.

The contents of the New Employers Starter Pack are listed below.

All these items are in Portable Document Format (PDF) format. To view a PDF you must have [Adobe Acrobat Reader](#) installed on your machine.

We will send these items if you are operating a Construction Industry Scheme

Name	File Size	Description
CIS 28	47K	Construction Industry Scheme specific
CIS 29	51K	

3 x Posters

- [CIS 62A](#) 221K
- [CIS 62B](#) 219K
- [CIS 62C](#) 240K

IR 148	57K
IR14/15	137K

To save a document to your hard drive, right click on the link and choose the save option.

Name	File Size	Description
NESI 8 Letter	20K	A covering letter accompanies the New Employer Starter Pack. We issue different letters depending on your circumstances, but a typical example is shown here. You should retain your letter as it contains important information.
Start Here Booklet	339K	This booklet accompanies the Employers CD ROM which is mailed to all new employers in the New Employer's Starter Pack. Further copies of the CD ROM can be obtained from the Employers Orderline
Order form	93K	Employer Orderline order Form.
P11	75K	Deductions working sheet to record your employees pay details.
P32	45K	Employer's Payment Record. A record of details every time you make a payment.
P45	64K	Details Employee leaving work - this form is given when an employee leaves work. . This is a specimen for viewing only. You can order this item using the Employer's Orderline - Online order form, provided you have a valid PAYE reference number.
P46	45K	Employer's notice to Tax Office - use this form when the employees does not have a P45 or was previously paid below the threshold.
P49	377K	Paying someone for the first time - use this booklet to work out how to deduct National Insurance contributions and PAYE Income Tax

We will send these items if you are operating a Simplified Deduction Scheme sometimes referred to as a Domestic Scheme

Name	File Size	Description
CA37	232K	National Insurance Contributions Tables - Simplified Deductions Scheme for employers
P16	87K	Simplified PAYE Deduction Scheme This leaflet explains how to fill in a Simplified Deduction Card, form P12 and use the attached Tax Tables.
P16A	36K	Simplified PAYE Deduction Scheme Employer's report when taking on a new employee
P25	198K	Notes about Simplified PAYE Deduction Schemes

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) requires all employers to pay employees minimum wage plus overtime for any hours worked over 40 hours per week. (While there is federal minimum wage, it is different in many states). The FLSA, however, only covers non-exempt employees, i.e., unskilled laborers, minors and those who work by the hour. Exempt employees (those not covered by the FLSA), include professionals, skilled workers, volunteer, independent contractors, farm workers, mechanics, and computer programmers, among many other skilled positions. Smaller business may also be exempt from FLSA requirements.

CANADA

The following link provides basic information on the Canadian Government:

http://www.canada.gc.ca/depts/major/depind_e.html

The following link provides information on each individual Province:

<http://bsa.cbsc.org/gol/bsa/interface.nsf/vSSGBasic/su10000e.htm>

AUSTRALIA

Taxation

Taxation legislation is administered by the federal and state and territory governments. Before you can begin operating your new small business you'll need to know what you must do to comply with government taxation regulations. As well as applying for an Australian Business Number (ABN), Goods and Services Tax (GST), Tax File Number (TFN) and Fringe Benefits Tax (FBT), you may be required to pay state and territory land tax, pay-roll tax and other duties.

Australian Commonwealth Government Gateway

<http://www.australia.gov.au/>

General Information

<http://gov.info.au/>

Federal, State and Local Government

<http://www.nia.gov.au/oz/gov/>

IRELAND

The Government of Ireland Official Gateway

<http://www.irlgov.ie/>

Irish local government Council websites:

<http://www.outlood.com/localgov/eire.htm>

NEW ZEALAND

The Government of New Zealand Gateway

<http://www.govt.nz/>

The E-Government site for New Zealand

<http://www.e.govt.nz/>

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