



Employed vs self employed

PRIYA KOTECHA highlights HMRC's stance on how to differentiate between employed and self-employed staff

Whether you own your own orthodontic practice, or you work in one, working as a team is extremely important. There will be some members of the team who are self-employed and others who are employed and there has been a lot lately about the two types and how HMRC may attempt to 'see through' a term for its true substance.

I am not an employment solicitor, so specialist advice should definitely be sought on contracts and how to protect yourself - this article does not attempt to distinguish between employees and self-employed within a legal framework, rather I would like to highlight HMRC's stance on how to distinguish between the two and also the tax consequences of each (oh what fun!).

The gov.uk website states:

Someone is probably self-employed and shouldn't be paid through PAYE if most of the following are true:

- they're in business for themselves, are responsible for the success or failure of their business and can make a loss or a profit
- they can decide what work they do and

when, where or how to do it

- they can hire someone else to do the work
- they're responsible for fixing any unsatisfactory work in their own time
- the utiliser of their services agrees a fixed price for their work - it doesn't depend on how long the job takes to finish
- they use their own money to buy business assets, cover running costs, and provide tools and equipment for their work
- they can work for more than one client

If someone does not fulfil the above, for example a dental nurse or receptionist, it follows that they must be employed.

Rather than me go off into a happy stupor where I discuss the various tax treatments at length, I am going to answer questions which I get asked frequently.

Q. MY NURSE SAID SHE IS SELF EMPLOYED AND DOES NOT WANT ME TO PAY HER UNDER DEDUCTION OF TAX AND NATIONAL INSURANCE.

A. Unless your nurse fulfils the criteria above (which would seem unlikely) your nurse

FACTFILE



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is employed. If you pay her without deducting tax and national insurance, HMRC would attempt to recover your nurses' tax and national insurance that ought to have been deducted from her pay, from you instead! The exception is where you pay an agency for the provision of temporary nurses. In this case, the agency will apply PAYE and you will pay the agency so no need for you to deduct tax and national insurance.

Q. MY HYGIENIST FULFILS THE ABOVE CRITERIA BUT STILL INSISTS THAT I SET HIM UP ON PAYROLL. WHAT ARE THE CONSEQUENCES?

A. For you, you will fall under employment regulations for things like holiday, maternity, unfair dismissal etc and may also be responsible for statutory sick pay. You are likely also to have to pay the additional 13.8% employers NIC and also auto enrolment (pensions) may apply. For your hygienist, he will only be able to deduct for tax expenses which are wholly, exclusively and necessarily incurred rather than, if he were self-employed,

expenses that are wholly and exclusively incurred.

The rates of tax for your hygienist are the same but the national insurance is different – it is 12% for your employee between earnings of £162 and £892 per week and 2% above this. Were he self-employed, he would pay 9% between £8,424 and £46,350 and 2% above that.

As self-employed he will be required to complete a tax return which may not be necessary as an employee.



Q. MY CLEANER SAYS THAT THEY WANT ME TO PAY THEM WITHOUT DEDUCTING TAX AND NATIONAL INSURANCE. WHAT SHOULD I DO?

A. Again, read the criteria. A cleaning company is likely to fulfil all of these and in that case, it is fine for you not to deduct tax and national insurance.

However if you have a cleaner who is not from a cleaning company (and does not have their own business), they work set hours (which you tell them) and just do whatever cleaning they can in those hours (if they have not got around to

doing the kitchen and their time is up – they will leave!), you buy and supply their cleaning materials and tools of the trade and if they can't come and do the cleaning for you they will NOT send someone else who can – you will just have to deal with the mess yourself!

In this case, it seems that the cleaner should be put on payroll as they are an employee

Again, to reiterate, I am sadly not a solicitor, so you should always take legal advice when it comes to contracts of employment or self-employment and of course, make sure that you do have contracts in place. As a US senator once said though, 'a contract is an agreement that is binding only on the weaker party' A good solicitor will hopefully be able to put that right!  

FOR MORE INFORMATION

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