



**Code of Practice for
Determining
Employment or
Self-Employment
Status of Individuals.**

Code of Practice in determining Employment status

This leaflet was prepared by the Employment Status Group set up under the Programme for Prosperity and Fairness. The group was set up because of a growing concern that there may be increasing numbers of individuals categorised as ‘self employed’ when the ‘indicators’ may be that ‘employee’ status would be more appropriate. The leaflet has been updated in 2007 by the Hidden Economy Monitoring Group under Towards 2016 Social Partnership Agreement. The purpose of the document is to eliminate misconceptions and provide clarity. It is not meant to bring individuals who are genuinely self-employed into employment status.

In most cases it will be clear whether an individual is employed or self-employed. However, it may not always be so obvious, which in turn can lead to misconceptions in relation to the employment status of individuals.

The criteria below should help in reaching a conclusion. It is important that the job as a whole is looked at, including working conditions and the reality of the relationship, when considering the guidelines. 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? This economic test is paramount.

The Safety, Health and Welfare at Work Act, 2005 is the cornerstone of health and safety regulation in Ireland. Employers and Employees all have duties under the act. The legislation treats self-employed persons in a similar manner to employers. It places on them an onus to manage, plan and conduct all work activities to ensure the health and safety of all persons at a workplace. Generally speaking self-employed persons and contractors have a greater responsibility to manage health and safety issues than employees. However, regardless of a person's status, health and safety management and practice is essential in all work operations. More information is available from www.hsa.ie

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 he or she:

- ✓ 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 the work can be subcontracted and paid on by the person subcontracting 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 the 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 by 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 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 contacting 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 he or she:

- ▲ Owns his or her own business.
- ▲ Is exposed to financial risk, by having to bear the cost of making good faulty or standard work carried out under the contract.
- ▲ Assumes responsibility for investment and management in 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 he or she does it personally.
- ▲ Is free to hire other people, on his or her 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 his or her 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 he or she will normally be an employee.
- ▲ The fact that an individual has registered for self-assessment or VAT under the principles of self-assessment does not automatically mean that he or she 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 Department of Social and Family Affairs 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.
- ▲ In the construction sector, for health and safety reasons, all

individuals are under the direction of the site foreman/overseer. The self-employed individual controls the method to be employed in carrying out the work.

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 his or her income.
 - ▶ A self-employed person is obliged to pay preliminary tax and file income tax returns whether or not he or she is asked for them.
- Entitlement to a number of social welfare benefits, such as unemployment and disability benefits.
 - ▶ An employee will be entitled to unemployment, 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 in respect of working time, holidays, maternity / parental leave, protection from unfair dismissal etc.

- ▶ A self-employed person will not have these rights 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, the following organisations can provide assistance.

Tax and PRSI

- * The Local Revenue Office or The Local Social Welfare Office.
- * Scope Section in the Department of Social and Family Affairs.

For further details see pages 7 - 10.

If there is still doubt as to whether a person is employed or self-employed the Local Revenue Office or Scope Section of Department of Social and Family Affairs should be contacted for assistance. Having established all of the relevant facts, a written decision as to 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.

The National Employment Rights Authority

The National Employment Rights Authority (NERA) was established on an interim basis in February 2007 in accordance with the commitment under Towards 2016, the Social Partnership Agreement for 2006-2015. Three units dealing with employment rights, which were formerly part of the Department of Enterprise, Trade and Employment have been subsumed into NERA: the **Employment Rights Information Unit**, the **Labour Inspectorate** and the **Prosecution and Enforcement Unit**. NERA's key objective is to achieve compliance with employment rights legislation. This will be achieved through provision of information, carrying out inspections and enforcement and prosecutions when necessary.

Relevant Contracts Tax - Form RCT I

Relevant Contracts Tax (RCT) applies where a Subcontractor enters into a contract with a Principal Contractor (Principal) to carry out relevant operations (construction, forestry or meat processing operations). The Principal and Subcontractor must jointly complete Form RCT I, declaring that the contract is a Relevant Contract (and not a contract of employment). Form RCT I has been revised to require further information from both Principal and Subcontractor as to why a proposed contract is considered to be a Relevant Contract. An incorrect designation of the contract as a Relevant Contract will have consequences for both the Principal and the Subcontractor. Further information is available from www.revenue.ie.

Employment which is not insurable

The 2003 and 2006 Employment Permits Acts provide for a large number of employer obligations and offences which include specifically the employment of non-EEA (non-European Economic Area) nationals except in accordance with an employment permit, where required. In this regard, a contract of employment between such a migrant worker and an employer which is not covered by a valid employment permit is an illegal contract and that employment is not consequently insurable under the Social Welfare Consolidation Act, 2005. Further information regarding Employment Permits legislation is available at www.entemp.ie/labour/workpermits or by calling LoCall 1890 201 606.

Useful contacts for information and leaflets:

The **Report of the Employment Status Group** is available for viewing on the websites of:

- * Revenue Commissioners
- * Department of Social & Family Affairs
- * Department of Enterprise, Trade & Employment
- * Irish Congress of Trade Unions
- * Irish Business and Employers Confederation

Revenue Commissioners

See pages 8-10 for list of Local Revenue Offices.

Department of Social and Family Affairs

Scope Section,
Department of Social and Family Affairs,
Oisín House,
Pearse Street,
Dublin 2.

(or any Social Welfare Local Office)

Phone No. (01) 673-2585

Email: scope@welfare.ie

Website: www.welfare.ie

Department of Enterprise, Trade and Employment

Davitt House,
65A Adelaide Rd.,
Dublin 2.

LoCall 1890 220 222

Phone No. (01) 631-3131

Website: www.entemp.ie

National Employment Rights Authority (NERA)

Employment Rights Information Unit,
O'Brien Road,
Carlow.

LoCall 1890 808 090

Phone No. (059) 917-8990

E-mail: info@employmentrights.ie

Website: www.employmentrights.ie

Irish Congress of Trade Unions

31-32 Parnell Square,
Dublin 1.

Phone No. (01) 889-7777

Website: www.ictu.ie

Irish Business and Employers Confederation

Confederation House,
84/86 Lower Baggot Street,
Dublin 2.

Phone No. (01) 605-1500

Website: www.ibec.ie

Employment Appeals Tribunal

Davitt House,
65A Adelaide Road,
Dublin 2.

LoCall 1890 220 222

Phone No. (01) 631-3006/9

Website: www.eatribunal.ie

Health & Safety Authority

The Metropolitan Building,
James Joyce Street,
Dublin 1.

LoCall 1890 289 389

Website: www.hsa.ie

Labour Court

Tom Johnson House,
Haddington Road,
Dublin 4.

LoCall 1890 220 228

Phone No. (01) 613-6666

Website www.labourcourt.ie

Labour Relations Commission & Rights Commissioners

Tom Johnson House,
Haddington Road,
Dublin 4.

LoCall 1890 220 227

Phone No. (01) 631-6700

Website www.lrc.ie

Construction Industry Federation

Construction House,
Canal Road,
Dublin 6.

Phone No. (01) 406-6000

Website www.cif.ie

Small Firms Association

Confederation House,
84-86 Lower Baggot Street,
Dublin 2.

Phone No. (01) 605-1668

Website: www.sfa.ie

LOCAL REVENUE OFFICES

EMPLOYER QUERIES :

Lo-Call 1890 254 565

**Email addresses for all Revenue offices are available at
www.revenue.ie/cont_main.htm**

NON-PAYE CUSTOMERS

DUBLIN REGION

Customers living in and businesses managed and controlled in the following geographical areas

CITY CENTRE DISTRICT Dublin postal districts 1 and 2.	9/15 Upper O'Connell Street, Dublin 1.	(01) 865-5000
SOUTH CITY DISTRICT Dublin City Council local authority area south of River Liffey but excluding Dublin 2 postal district.	85 - 93 Lower Mount Street, Dublin 2.	(01) 647-4000
NORTH CITY DISTRICT Dublin City Council local authority area north of River Liffey but excluding Dublin 1 postal district.	9/15 Upper O'Connell Street, Dublin 1.	(01) 865-5000
SOUTH COUNTY DISTRICT South Dublin County Council local authority area.	Plaza Complex, Belgard Road, Tallaght, Dublin 24.	(01) 647-0700
FINGAL DISTRICT Fingal local authority area.	Block D, Ashtowngate, Navan Road, Dublin 15.	1890 678 456 (01) 827-7000
DUN LAOGHAIRE - RATHDOWN DISTRICT Dun Laoghaire & Rathdown local authority area.	Lansdowne House, Lansdowne Road, Ballsbridge, Dublin 4.	(01) 632-9400

LARGE CASES DIVISION

LARGE CASES DIVISION	Setanta Centre, Nassau Street, Dublin 2.	(01) 647-0710
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EAST & SOUTH EAST REGION

Customers living in and businesses managed and controlled in the following geographical areas

TIPPERARY DISTRICT Excludes South Tipperary Clonmel area	Government Offices, Stradavoher, Thurles, Co. Tipperary.	(0504) 28700
WATERFORD DISTRICT Includes South Tipperary Clonmel area and South Kilkenny	Government Offices, The Glen, Waterford.	(051) 862-100
WEXFORD DISTRICT County Wexford	Government Offices, Anne Street, Wexford.	(053) 914-9300
KILKENNY DISTRICT Includes Carlow & Laois but excludes South Kilkenny	Government Offices, Hebron Road, Kilkenny.	(056) 776-0700
WICKLOW DISTRICT County Wicklow	4 Claremont Road, Sandymount, Dublin 4.	(01) 631-6500
KILDARE DISTRICT County Kildare	Grattan House, Lower Mount Street, Dublin 2.	(01) 647-4520
MEATH DISTRICT County Meath	Abbey Mall, Abbey Road, Navan, Co. Meath.	(046) 903-3600

BORDER MIDLANDS WEST REGION

Customers living in and businesses managed and controlled in the following geographical areas

CAVAN/MONAGHAN DISTRICT Counties Cavan and Monaghan	Government Offices, Millennium Centre, Dundalk, Co. Louth.	(042) 935-3700
DONEGAL DISTRICT County Donegal	Government Offices, High Road, Letterkenny, Co. Donegal.	(074) 916-9400
GALWAY COUNTY DISTRICT Galway County excluding City	Hibernian House, Eyre Square, Galway.	(091) 536-000
GALWAY/ROSCOMMON DISTRICT Galway City and County Roscommon	Hibernian House, Eyre Square, Galway.	(091) 536-000
LOUTH DISTRICT County Louth	Government Offices, Millennium Centre, Dundalk, Co. Louth.	(042) 935-3700
MAYO DISTRICT County Mayo	Michael Davitt House, Castlebar, Co. Mayo.	(094) 903-7000
SLIGO DISTRICT Counties Sligo, Leitrim and Longford	Government Offices, Cranmore Rd, Sligo.	(071) 914-8600
WESTMEATH/OFFALY DISTRICT Counties Westmeath and Offaly	Government Offices, Pearse Street, Athlone, Co. Westmeath.	(090) 642-1800

SOUTH WEST REGION		
Customers living in and businesses managed and controlled in the following geographical areas		
CLARE DISTRICT County Clare	Government Offices, Kilrush Road, Ennis, Co. Clare.	(065) 684-9000
CORK EAST DISTRICT Cork East including Cork County East, City North & City Centre.	Government Offices, Sullivan's Quay, Cork.	(021) 432-5000
CORK SOUTH WEST DISTRICT Cork South West including Cork County South West, City South and City East.	Government Offices, Sullivan's Quay, Cork.	(021) 432-5000
CORK NORTH WEST DISTRICT Cork North West including Cork County North West & City West.	Government Offices, Sullivan's Quay, Cork.	(021) 432-5000
KERRY DISTRICT County Kerry.	Government Offices, Spa Road, Tralee, Co. Kerry.	(066) 716-1000
LIMERICK DISTRICT County Limerick.	River House, Charlotte's Quay, Limerick.	(061) 212-700
OTHER		
PUBLIC OFFICES (Enquiries dealt with at public counter only)		
Central Revenue Information Office	Cathedral Street, Dublin1. Open: 8.30am to 4pm Monday - Friday.	
Tallaght Revenue Information Office	Level 2, The Square, Tallaght, Dublin 24. Open: 9.30am to 4pm Monday – Friday.	
IRISH CASES (For customers who wish to have their tax affairs dealt with through the Irish language).		
Aonad 7, North City District	9/15 Upper O'Connell Street, Dublin 1.	(01) 865-5000
PAYE CUSTOMERS		
BMW REGION Customers in Counties Donegal, Leitrim, Sligo, Mayo, Galway, Roscommon, Longford, Offaly, Cavan, Monaghan, Westmeath and Louth	PAYE Taxpayers living in BMW Region Lo-Call 1890 777 425	
DUBLIN REGION Customers in Dublin City and County	PAYE Taxpayers living in Dublin Region Lo-Call 1890 333 425	
SOUTH WEST REGION Customers in Counties Clare, Cork, Limerick and Kerry	PAYE Taxpayers living in SW Region Lo-Call 1890 222 425	
EAST & SOUTH EAST REGION Customers in Counties Meath, Kildare, Laois, Tipperary, Waterford, Wexford, Wicklow, Kilkenny and Carlow	PAYE Taxpayers living in E&SE Region Lo-Call 1890 444 425	



This leaflet has been compiled with the assistance of:

Department of Enterprise, Trade and Employment, National Employment Rights Authority, Department of Social and Family Affairs, Department of Finance, Irish Congress of Trade Unions, Irish Business and Employers Confederation, Small Firms Association, the Construction Industry Federation and Revenue Commissioners.