



# SafeWise

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**ENGAGING SELF-EMPLOYED CONTRACTORS  
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In the UK, the relationship between companies and self-employed individuals (also referred to as freelancers or contractors) is distinct from that of traditional employees.

This has important implications for both human resources (HR) practices and legal obligations.

This guide outlines the key considerations and rules that both companies and self-employed individuals must navigate.



One of the most critical tasks is determining whether an individual is genuinely self-employed or should be classified as an employee. Just because an individual tells you they are self-employed, doesn't necessarily mean they are.

Different employment and tax legislation applies depending on the employment status of an individual, therefore you could be leaving your business open to legal claims if you do not correctly define the relationship.

The legal test for determining a self-employed status is outlined below, however working arrangements should also be reviewed and what is set out in a contract.

An individual will be self-employed if they are not an employee or a worker. In essence this means that:

- there is no obligation to provide personal service (the individual doesn't personally need to complete the work, they can send someone else in their place)
- there is no mutuality of obligation (the business doesn't have to provide work, and the individual doesn't have to accept it)
- they are carrying out a business and the other party is the customer

Working arrangements and other factors set out below can also help to define the status.

For example, the individual is more likely to be classed as self-employed if they:

- are responsible for how they work and when they work, i.e. their start and finish times
- run their own business and takes responsibility for its success or failure and any financial risks
- tender for contracts to provide services for clients
- invoice for their pay instead of getting a wage
- are able to work for different clients and charge different fees
- provides their own tools and equipment



To help ensure that the self-employed status of the individual is clear, it helps to have a contract for services in place, which defines the nature of the working relationship.

SafeWise can provide you with a contract for services template, which covers terms such as:

- The notice required by either side to end the contract
- Payment terms
- The specific services the contractor/freelancer will provide
- The tools/equipment either side will be provide
- A confidentiality clause
- A confirmation that the contractor/freelancer won't be entitled to any statutory rights such as annual leave



IR35, also known as off-payroll working rules, are designed to prevent "disguised employment," where a self-employed individual is, in reality, functioning as an employee.

If the individual is working through an intermediary, such as a personal service company (PSC), IR35 rules still apply.

The HMRC would assess the relationship, reviewing the working arrangements and the contract in place. If caught under IR35, the individual may be required to pay income tax and National Insurance contributions (NICs) like an employee.

If you're unsure on the status of an individual, the HMRC has an [online check tool](#) to help determine it.

It's crucial to communicate the outcome of the IR35 assessment to the individual, particularly if they fall under the IR35 rules otherwise they could be required to pay up to 70% of the unpaid tax bill. The company must also operate PAYE on the payments made to them, deducting tax and NICs.



Self-employed individuals are responsible for their own tax and NICs. They must register with HMRC and complete a self-assessment tax return each year. Companies do not deduct PAYE or NICs for these individuals.

If the self-employed individual is VAT-registered, they must charge VAT on their services. Companies engaging them should ensure they correctly handle this in their financial systems.



Self-employed individuals have fewer statutory employment rights compared with employees, for example they are not entitled to holiday pay, sick pay or redundancy rights.

Therefore, if you haven't correctly defined the employment status, the individual may be able to make a tribunal employment claim, such as back-dated holiday pay. In the employment tribunal case of Pimlico Plumbers Ltd v Smith, a plumber previously deemed as "Self-Employed" won his claim that he was in fact a worker and was awarded £74,000 of holiday pay.

Self-employed workers are still protected against discrimination under the Equality Act 2010, therefore policies should be in place such as Equal Opportunities, Anti-bullying and Harassment and Whistleblowing.

Companies also have the same duty of care to ensure that self-employed individuals working on their premises or when using their equipment are safe. This includes providing the correct PPE and ensuring compliance with health and safety regulations.

Lastly, self-employed individuals are still covered under GDPR and their personal data should be stored securely. They should also have access to a Data Privacy Notice.





The following points should also be noted:

- Consider if a self-employed individual or an employee would be the best option for the role before you begin recruiting
- Self-employed individuals should still be inducted properly into their role, and are given the correct resources. Ensure they are offboarded properly when they leave, removing any access to data and company property is returned
- If there are risks with the working arrangements of current self-employed workers, would they consider moving to an employee status?
- Individuals can be both self-employed and employed at the same time. For example, they may have their own business which they run at weekends, but work for an employer during weekdays
- Although self-employed individuals are not part of the workforce in the same way as employees, it can be beneficial for HR to consider how they are integrated into the company's culture. This may include inviting them to relevant meetings or social events, ensuring they feel part of the team, which can lead to better collaboration.

Managers and HR professionals in the UK must be diligent in managing the engagement of self-employed individuals, ensuring compliance with tax laws, protecting the company from potential liabilities, and fostering a positive working relationship.

Properly drafted contracts, awareness of legal obligations, and a clear distinction between employees and contractors are essential to navigate this complex area effectively.





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and HR Advice**

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