

Hampshire Employment Solicitor Asks Are You Really Self Employed?

Do you consider yourself self employed or have contractors that you consider to be self-employed? Do the contractors turn up to work everyday, have tasks and assignments controlled by the employer, complete assignments on site using company property, and seem to be treated like an employee? If so, you have employees and not self employed contractors even if you have a contract that states otherwise. Many contractors wrongly pretend to the HMRC that they are self employed even though legally they are considered employees.

In a recent Court of Appeal case it was decided that two workers who identified themselves to the HMRC as self employed contractors could actually argue that they were employees when it suited the situation. The employees were able to bring unfair dismissal claims against the employer even though they had contracts that claimed these were self employed individuals. If you are an employer, this case should cause you some alarm because your company could be open to an unfair dismissal claim when you terminate a contract. All companies really need to make sure that the workers they are using are truly self employed contractors and not employees in disguise.

What makes this Court of Appeal case so interesting is the employer argued that the employees lied about their employee status when it suited them for tax purposes but then when it suited the situation the employee changed their status in order to sue for unfair dismissal. The court found that these employees were originally brought in as self-employed contractors but later, through the actions and suggestions of the employer, they became full employees. Proper training for your management team is essential in order to prevent this situation from happening to your company. Train your managers on how to deal with and how to treat your contractors in order to prevent them from treating a contractor like an employee.

If you hire people for your company, what can you do to prevent your company from the possibility of an unfair dismissal claim from your contractors? First, you need to make sure your contracts are correct. Your contracts need to create a distinction between an employee and a contractor and contain explicit information on what is expected from your contractors. An employment lawyer will be able to confirm that the proper language is included in your contracts and work documents in order to protect your company from a potential lawsuit. You may also want a lawyer to audit the individuals you are working with to determine if the people currently working in your organization are self-employed contractors or employees in disguise.

All employers should take the necessary precautions to protect their company from potential employee related lawsuits. Unfair dismissal claims are only one of the possible reasons that you can be sued. Take the time to have a lawyer review in detail who owns all intellectual property created during the course of the contract. It is important to determine who owns the content created for your company. For employees all intellectual property is automatically owned by the company but if you're using a self-employed contractor the contract owns the materials. Protect your company by speaking to a lawyer today.

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About the Author

Ian Robinson is a Managing Partner of a large [Hampshire Employment Solicitor](#) Firm. Ian is a highly experienced solicitor and also a member of The Law Society, Hampshire Incorporated Law Society and C.L.S.A, leading [Portsmouth in Employment Law](#).

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