

Payment of Independent Consultant or Contractor

Establishing the employment status of individuals defines the rights and responsibilities people have at work. It also clarifies the responsibilities of the employer and the employee, worker or contractor in relation to their tax and NI liabilities. There are various types of Employment Status – Employee, Self-employed, PSC or Agency staff.

It is important that the correct processes are worked through and the appropriate checks made to ensure that LBU follows HMRC rules for engaging staff and contractors. **Where HMRC successfully challenge a worker's status, the engager will be liable for all unpaid Income Tax, National Insurance Contributions (both employee and employer) penalties and related interest payments.**

Independent contractors are engaged via the University directly, on a contract for services, and therefore a procurement process will be necessary. In this instance LBU's contract will be with the company providing the resource. The University Financial Regulations should always be followed when placing work.

Personal Services Companies (PSC – IR35)

A **Personal Service Company (PSC)** is a Company that sells the work of an individual or group of individuals, and which is owned and operated by that individual or group of individuals (thus being distinguished from a Managed Service Company, which is not normally owned or operated by the person(s) whose work is being sold). Contractor limited companies are necessarily of this type.

In April 2017 the Government introduced new rules for the public sector for the tax treatment of personal service companies in the light of concerns that this corporate form was being exploited to avoid tax. These rules are usually called IR35 and affects contractors working for an end client through an intermediary, where if it weren't for that intermediary the terms, conditions and working practices would be one of employment.

Given that this area of employment is intrinsically linked to tax status, employing managers need to be clear that service procured through a PSCs meet the standards laid out in the HMRC guidance and that anyone providing their services through a PSC Ltd company would be taxed as an employee”.

Self-Employed

Where it has been established that a work specification is required and a self-employed individual is the best way of delivering the work specification, the next step is to go through the correct process to ensure that the individual is engaged correctly.

It is the terms and conditions of the engagement that determine whether the status should be that of self-employed and not by the individual stating that they are self-employed, registered with HMRC as self-employed or where operating under a trading name (e.g. Joe Bloggs and

Associates). Equally, status is not determined/influenced by the engager attempting to reduce employer costs or minimising workforce numbers.

It is the engager's responsibility to determine the correct status of the engagement and the engager will be responsible for any underpaid tax and NICs (both employees and employers) together with penalties and interest should HMRC subsequently successfully challenge the engagement status.

On no account should a contract (verbal or written) be agreed or work undertaken by the individual before the engager has determined the correct engagement status.

As a general guide, if the answer is 'Yes' to all of the following questions. Then the person is probably an employee (and should be on an LBU contract of employment on the Universities agreed terms and conditions and pay scales and paid via Payroll Services):

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Can they work a set amount of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week, or month?
- Can they get overtime pay or bonus payment?

If the answer is 'Yes' to all of the following questions, it will usually mean that the worker is self-employed:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

Care should also be exercised in cases such as when:

- the worker is engaged to undertake similar work to that already performed by existing LBU employees. Why is this engagement any different, why should it be self-employed?
- the worker has previously been employed by LBU. What is different about this engagement to the work previously carried out?
- the self-employed engagement has been on-going for several months. Is the individual still carrying out the same duties and in the same manner or has the position evolved and if so a fresh appraisal of the situation should be undertaken and documented.

Please note that from 6 April 2017 all departments should use the HMRC tools, whenever engaging a contractor or a self-employed individual.

Determining a worker's status is not always straightforward but assistance is available from HMRC via their Check Employment Status for tax tool. This is an online tool which is available to check a workers' employment status. Provided the information that is entered into the tool is an accurate reflection of the engagement (and the work to be carried out for a particular engagement) reliance can be placed on the tool outcome to defend against possible future HMRC action. The HMRC Employment status for tax tool can be accessed at:

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

Once you have completed the online assessment the tools will produce a result which determines how the individual will be paid.

Before you rely on this result, please confirm that you have:

- read the guidance for each question
- reviewed your answers
- given answers that reflect the actual or expected working practices of this engagement

Please complete the "Customise this result record" and save the outcome as a pdf which you will need to submit to the Procurement team when you request a new supplier to be set up.

If the working practices of this engagement change this result may no longer hold and a further check on employment status for tax would need to be carried out.

Current Ltd PSC contractors that fall within the IR35 rules will be moved to payroll. Payments to a PSC contractor will only be made once an assessment outcome page has been received by Payroll.

**please note these statuses are only tax indicators and do not change the position on whether an employment relationship exists. Individuals engaged through PSCs who are given the status of 'employee' through the employment status for tax checking tool do not automatically become employees of the University with associated benefits.*

If the worker is engaged directly by the department, please advise the Payroll Team. If the individual is engaged by an agency, please advise the agency of the status: they will then remit PAYE tax and NICs where appropriate.

If you are completing the HMRC "Check employment status for tax" tool with an agency contractor, it is your responsibility to inform the agency of the agreed status of the individual. It is then the agency's responsibility to remit the tax and national insurance where required.

Actions for the future

It is important that the appropriate HMRC “Check employment status for tax” tool is carried out for all new self-employed, contractors, both agency and non-agency, in order to determine their status. This applies whether your department is using the same person for a different piece of work, or if the engagement is entirely new.

I would like to take this opportunity to remind you of the significance of this work and the potential impact of failing to comply with the legislation. Failure to comply with the new regulations could result in a fine of up to five times the amount of the total contract.

Any questions regarding should be directed to the Payroll Department contact details below:

payroll@leedsbeckett.ac.uk