Code of Practice on Determining Employment Status

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1. Introduction

This Code of Practice ("the Code") on determining employment status is intended to provide a clear understanding of the employment status of individuals, taking into account current labour market practices and developments in legislation and case law.

The Code is intended to be a 'living document' which will continue to be updated to reflect future, relevant changes in the labour market, relevant legislation and case law.

Following the 2023 judgement of the Supreme Court in the **Karshan** case[1], the Code has been reviewed and updated by an interdepartmental group comprising of the Department of Social Protection, the Office of the Revenue Commissioners and the Workplace Relations Commission (WRC). While the **Karshan** case related to the taxation treatment of workers in the food delivery sector, the judgement outlined five questions which should be considered in deciding whether in any given case in any sector, a worker is an employee. Revenue has published detailed guidance as to the application of the judgement for taxation purposes which is available here.

The Code aims to be of benefit to employers, employees, independent contractors and legal, financial and HR professionals. It is also of benefit to investigators, decision-makers and adjudicators in the Department of Social Protection, the Office of the Revenue Commissioners, the WRC, their respective appeals bodies, and the courts.

In Ireland, there is a wide range of ways to work and to operate a business. Specific legislative protections for workers apply to each type, including self-employment, full-time employment, part-time employment, temporary agency work and fixed-term contracts.

It is important to ensure that workers are correctly classified in a way that matches the reality of the relationship between the worker and the business. The choice of business model should not serve to exclude any worker from their proper entitlements.

The misclassification of a worker as being self-employed when the reality of the situation is that they are actually employees, is a matter of concern. Misclassification reduces contributions to the Social Insurance Fund and excludes workers from full Pay Related Social Insurance (PRSI) and employment rights protections.

[1]The Revenue Commissioners v Karshan (Midlands) LTD T/A Domino's Pizza [2023] IESC 24 which is available here

Equally, the Code acknowledges the existence and significant value to the economy of genuine self-employment. The Code is not intended to bring genuinely independent contractors into the employee category.

It is also important to note that the Safety, Health and Welfare at Work Act 2005 applies to all workers on a premises, regardless of their employment status. Employers and employees all have duties under the Act. The Health and Safety Authority (HSA) is the statutory body charged with ensuring compliance in this area.

2. Determining employment status

In most cases it will be clear whether a worker is employed or self-employed.

However, as there is no single, clear legal definition of the terms ‘employed’ or ‘self-employed’ in Irish or EU law in order to determine a person’s employment status, both the written or oral contract and the reality behind the contract must be taken into consideration. Although the intention of the parties and any written agreement is given due consideration, they do not on their own determine the employment status for the purpose of social insurance classification, income tax or employment rights.

Accordingly, while the terms of a contract might be quite clear in stating that a worker is engaged under a contract for service i.e.as a self-employed contractor, courts and statutory bodies must consider the nature of the relationship in determining the workers’ classification for the purpose of social insurance, income tax and employment rights. Taking the full facts into account these authorities may in fact determine that a worker is engaged in a contract of service – i.e.as an employee.

In doing this, investigators, adjudicators and decision makers will consider any formal contracts, and, in addition, consider how the work is actually carried out and will assess the relationship between the worker providing the service and the business paying for that service in line with the five-step framework set out in the Karshan judgment (see Section 5). In addition, as the definition of a “employee” differs in different pieces of legislation (e.g. Organisation of Working Time Act, 1997, Unfair Dismissals Act, Employment Equality Acts etc.), it is well established that every case must be considered on its own facts.

3. Why employment status matters

'Employment status' for the purposes of the Code, refers to whether a person is determined to be an 'employee' or to be 'self-employed'. An employee is categorised as being engaged on the basis of a 'contract of service' whereas a self-employed person is engaged on a 'contract **for** services'.

Employment status has implications for:

- Pay Related Social Insurance (PRSI) contributions and associated social welfare benefits
- Tax treatment
- Employment rights - many statutory employment rights are only available to employees, as opposed to those who are self-employed.

4. Who makes the decision in relation to employment status?

There are a number of statutory bodies whose remit includes determining the employment status of a person. Each of these bodies make their determinations independently of each other in respect of the particular functions for which they are responsible.

These bodies are:

- The Department of Social Protection, which determines employment status with a view to deciding the appropriate class of PRSI for an individual
- The Office of the Revenue Commissioners, where employment status determines tax treatment
- The adjudication service of the WRC, which determines employment status as a preliminary issue when adjudicating on employment rights complaints.

Decisions of the Department of Social Protection or the WRC or Revenue are not binding on each other.

Appeals in respect of decisions by the Department of Social Protection are referred to the Social Welfare Appeals Office. WRC appeals in Employment, Equality and Industrial Relations cases are referred to the Labour Court. Taxation appeals are referred to the Tax Appeals Commission.

5. Questions to be considered – the five-step framework

The questions to be considered, and outlined in this section, have been updated in light of the Supreme Court's landmark judgment delivered in the Karshan case.

The five-step framework included in that judgment provides a clear decision-making model to determine the employment status of each worker taking account of their facts and circumstances.

The question of whether a worker is an employee can be resolved by firstly having regard to the following three 'filter' questions:

(i) Does the contract involve the exchange of wage or other remuneration for work?

(ii) If so, is the agreement one where the worker is agreeing to provide their own services, and not those of a third party, to the business?

(iii) If so, does the business exercise sufficient control over the worker to render the agreement one that is capable of being an employment agreement?

If any one of these questions are answered negatively it means that there can be no contract of employment.

(iv) If these three requirements are met, all of the circumstances of the arrangement/agreement/ contract must be considered. In other words, whether the terms of the arrangement/agreement/ contract between the business and the worker, interpreted in the light of the practical/real conditions of engagement (the "factual matrix") are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the worker working for themselves or for the business/employer.

(v) Finally, it should be determined whether there is anything in the particular legislative regime under consideration that requires a particular approach to be taken, e.g., a person might be an employee for social insurance purposes but self-employed for employment law or tax purposes.

All the relevant circumstances established by applying the framework as a whole are to be taken into account in determining the employment status of a worker in any given case.

Additional guidance on each of the questions in the framework is included below.

5.1 Exchange of wage or other remuneration for work

The first question a decision maker must consider when determining if the parties have entered into an employment contract, is whether they have entered into a contract at all (whether expressed or implied). Arrangements which do not involve the exchange of wages or other remuneration for work cannot be categorised as an employment contract.

For a contract of employment to exist, there has to be an offer of work, acceptance of that offer, and resulting payment or "consideration".

While this question is somewhat similar to what was previously referred to as the "Mutuality of Obligation" test, a term whose use the Supreme Court recommended should be avoided in the future, it should be viewed as doing no more than describing the consideration and work to be done that have to be present before a working arrangement is capable of being categorised as an employment contract.

As determined under the Karshan judgement, just one engagement or a series of separate engagements where consideration is offered and accepted in return for work being performed can give rise to contracts of service/employment. Provided there is payment by a business to a worker for a service directly or indirectly for the provision of the worker's labour (see Section 8.3), whether agreed in writing or not, and whether the work is carried out on a once off basis or on a continuous basis or anything in between, there is a contract which is capable of being an employment contract.

5.2 Personal Service

This question considers whether and to what extent the worker has agreed to provide their services to the business personally.

This is what is also known as the 'substitution test'. Substitution concerns a worker's right to appoint someone else as a substitute if he or she is unable, unwilling or never intended, to personally undertake to do all or part of the work. In other words, it concerns whether the worker can "subcontract" the work or hire assistants, and whether the agreement provides for personal service or can the worker independently arrange for someone else (a "substitute") to provide the service.

In applying this test, the Department of Social Protection, the Revenue Commissioners and the WRC will always ask the question - who does the work when the worker is absent? And, in addition, who selects, arranges and remunerates the replacement worker?

Even where the worker arranges the substitute, an important factor in assessing the level of substitution available is whether, and if so to what extent, the person/business who is offering the work has a say in who the worker hires.

Other important factors to consider are whether and to what extent the substitute is controlled and/or paid directly by the business/person offering the work or the worker.

The more restrictions imposed on the freedom for a worker to appoint a substitute, the more indicative the arrangement is that of a contract of employment. The types of restrictions that may occur which indicate an employment relationship include arrangements where prior approval of substitutes is required, payment of substitutes is made directly by the business rather the person they are providing cover for, or where substitutes are from a pool of preapproved workers.

5.3 Control

This question considers the ability, authority, or right of a business to exercise control over a worker concerning what work should be done, and how, when and where it should be done.

When assessing the degree of control held by the business and the degree of independence held by the worker, it should be borne in mind that the right of the business to exercise control is more relevant than whether they actually exercise this right.

It requires a decision maker to examine if the business exercises, or is capable of exercising, sufficient control over the worker to render the agreement one that is capable of being an employment contract.

There must obviously be a minimum level of control before a relationship can be capable of being an employment contract.

The actual degree of control will vary with the type of work and the skills of the worker.

When considering the issue of “control”, a decision maker may also have regard to the issues of “enterprise” and “integration” as follows:

- **Enterprise:** The extent to which the worker carries risk and their ability to make financial gain through their own ingenuity/efficiency. For example, can they monetise and retain the benefit of any cost savings they might achieve through innovation in the provision of the service?

- **Integration:** The extent to which a worker is an integral part of the operations of the business/person engaging their services, as opposed to carrying out work that, although done for the business, is peripheral or accessory to it. For example, could the business/ person continue to trade or operate if the workers’ services were withdrawn?

5.4 All the circumstances of the engagement

If the first three “filter” questions on work/wage bargain, personal service and control are answered affirmatively, consideration then needs to be given to the entire factual matrix of the engagement.

While a detailed written agreement may carry significant weight, efforts to describe a relationship in a particular way which differs from the day-to-day reality, in order to circumvent or frustrate the operation of statutory provisions, will be challenged. Additionally, terms of a written contract, which seek to describe the legal consequences of rights and obligations or conclusions of law, rather than defining the rights and obligations of the parties to the contract, may be disregarded. Phrases such as “as a self-employed contractor you will be responsible for your own tax” will carry little weight.

After reviewing the complete factual matrix, consideration should be given as to whether the evidence is consistent with a contract of employment with the individual working for the business as an employee, or whether the individual is self-employed.

The question to be considered is whether the facts indicate that the worker is providing services on his or her own account, or whether the facts indicate that the worker is providing the services on behalf of the business.

5.5 The legislative context

Consideration also needs to be given to any legislation that requires an adjustment or supplement to any of the foregoing questions in the particular circumstances of the relationship being considered. For example, the Taxes Consolidation Act (“TCA") provides that “office holders” (which specifically includes directors) are subject to Schedule E, i.e., the entity paying the office holder must apply the PAYE system to the payments.

As regards this fifth step of the framework, it must be emphasised in the context of the WRC determining employment status under the relevant employment legislation, that the definitions of ‘contract of employment, ‘employee’ and ‘employer’ differ from one employment enactment to another. Clear examples are the different definitions of ‘contract of employment’ under the Unfair Dismissals Act and the Employment Equality Acts. As a result, it is the case that a self-employed person who performs his/her duties personally for an employer under a contract is an employee for the purposes of availing of the protections afforded by the Employment Equality Act but is not an employee for the purposes of the Unfair Dismissals Act. Therefore, each case lodged with the WRC for Adjudication is different and is decided on its own facts by an independent Adjudication Officer.

6. Typical characteristics of an employee

The five-step framework must be considered in its entirety and applied to the facts of each case. However, when considering step 4 of the framework, while all of the following factors may not apply, a worker could potentially be considered to be an employee for the purposes of step 4 where they:

- Are under the control of another person who directs them as to how, when and where the work is to be carried out
- Supply labour only
- Receive a fixed hourly/weekly/monthly wage
- Cannot subcontract the work
- Do not supply materials for the job
- Do not provide equipment other than the small tools of the trade
- Are not exposed to personal financial risk in carrying out the work
- Do not assume any responsibility for investment and management in the business
- Do not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements
- Work set hours or a given number of hours per week or month
- Work for one person or for one business
- Receive expense payments to cover subsistence and/or travel expenses
- Are entitled to sick pay or extra pay for overtime.

Important caveats:

- If the work can be subcontracted and ‘paid on’ by the person subcontracting the work, it is possible the employer/employee relationship may simply be transferred on
- It is possible that the provision of tools or equipment will not have a significant bearing on the determination of employment status, having regard to all the circumstances of a particular case
- An individual could have considerable freedom and independence in carrying out work and still be an employee
- An individual with specialist knowledge might not be directed as to how the work is to be carried out and still be an employee
- 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 individuals work for more than one employer at the same period of time, and may still be regarded as an employee

- Some individuals may also be self-employed in respect of other work being performed by him or her, and may still be regarded as an employee of another business
- Some individuals work remotely or otherwise not on the business premises and are still regarded as employees
- Employees may work in a range of ways, including, but not limited to, part-time work, temporary work, seasonal work or occasional work
- Some employees are paid by reference to contracted hours, while others may be paid by reference to the amount of work actually done
- The hours of work or remuneration of an employee may be uncertain.

7. Typical characteristics of self-employment

The five-step framework must be considered in its entirety and applied to the facts of each case. However, when considering step 4 of the framework, while all of the following factors may not apply, a worker could potentially be considered to be self-employed for the purposes of step 4 where they:

- Own their own business
- Are exposed to financial risk by having to bear the cost of making good any faulty or substandard work carried out
- Assume responsibility for the investment in and management of their work activities
- Have the opportunity to profit from sound management in the scheduling and performance of engagements and tasks
- Have control over what is done, how it is done, when and where it is done and whether they, or another person, does the work
- Are free to hire other people, on terms they specify, 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
- Provide the materials for the job
- Provide 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
- Have a fixed place of business where materials, equipment etc. can be stored
- Costs and agrees a price for the job
- Provide their own insurance cover e.g., public liability cover, etc.
- Control the hours of work in fulfilling the job obligations.

Important caveats:

- The fact that an individual has registered for Income Tax or VAT under the principles of self-assessment does not automatically mean that he or she is self-employed
- A person who is a self-employed contractor in one job is not necessarily self-employed in another 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, regardless of employment status, are under the direction of the site foreman/overseer.

8. Special circumstances and developments in the labour market

8.1 PRSI classification for people who own or control companies

Employed persons who own or control, either directly or indirectly, 50% or more of the shareholding of the company that they work for cannot normally be an employee of that company for PRSI purposes under social welfare legislation. They must be classified as self-employed and are liable to pay PRSI at Class S.

The PRSI classification of employed persons who own or control less than 50% of the shareholding of the company that they work for is determined on a case-by-case basis, taking account of the tests/factors outlined in the preceding sections.

These rules were introduced in 2013. Prior to that, the PRSI classification of all employed persons who owned or controlled shares in the company in which they worked had been determined on a case-by-case basis taking into account the legal tests/factors outlined above. Currently, where a decision is required in relation to an employment that occurred before 28 June 2013, the relevant social welfare legislation affords the person the option of requesting the application of either the old rules or the new rules to that period of employment.

8.2 Agency workers

An agency worker is a person who has an agreement with an employment agency to work for another person or company. For example, a secretary may have an agreement with a secretarial agency to do work for a company while one of their employees is on leave.

Employment agencies in Ireland are regulated by the Employment Agency Act 1971. Under the Act, an employment agency must have a licence to operate its business.

Since 16 May 2012, temporary agency workers covered by the Protection of Employees (Temporary Agency Work) Act 2012 have the right to the same basic employment conditions as if they had been directly employed to do the same as, or similar work by the hirer under a contract of employment.

8.2.1 Who is considered the employer of the agency worker?

This depends on which rights the agency worker is seeking to enforce. Under the unfair dismissals legislation, the employer is the hirer for whom the employee

actually works, rather than the agency. Compliance with health and safety requirements is also the responsibility of the business for which the agency worker is working.

For the purposes of some, but not all, other employment and equality legislation, the party liable to pay the wages of the employee will, normally, be considered to be the employer of the agency worker.

Under social welfare legislation, agency workers are deemed to be insurably employed (i.e., they are not self-employed) and the party who pays the wages is the employer for PRSI purposes.

The taxation treatment of agency workers is dealt with in Tax and Duty Manual 05-01-15 which is available here.

8.3 Use of intermediary arrangements

There are two main forms of intermediary structures used in lieu of a direct engagement between the worker providing services and the end-user of those services. These are called personal service companies and managed service companies.

8.3.1 Personal Service Companies (PSC)

Under this arrangement, a contract for services is not explicitly agreed directly between the individual worker and the end-user availing of those services but is instead agreed between the end-user and an intermediate company owned/directed by the worker. The intermediary used in such circumstances is what is known as a personal service company (PSC). A PSC is generally a limited company that typically has a sole director who is the worker/contractor who owns most or all of the shares in the company.

The PSC pays the worker who, as the owner/director of the PSC, would, if they are considered self-employed and as they own more than 50% of the issued share capital, return PRSI as Class S. However, the Department of Social Protection will still apply the five-step test in determining the nature of any engagement which it investigates and, where it is determined that the PSC structure is simply a vehicle through which a de facto contract of service is arranged, will require the end-user to collect and remit Class A PRSI on any remuneration paid to the PSC.

Similarly, the tax treatment of the worker would be determined by the application of the five-step framework.

8.3.2 Managed Service Companies (MSC)

A variation on the PSC arrangement involves the use of what has become known as a managed service company (MSC). In essence, this involves setting up a company, which is generally structured with a number of worker shareholders who may or may not be involved in delivering similar services to the same end-user. The MSC is typically facilitated by a third-party agent who organises the legal and administrative affairs of the company. As the individual workers' shareholdings are below 50%, they can either be found to be self-employed or an employee of the MSC for PRSI purposes in respect of payments received from the MSC. Again however, the Department of Social Protection will still apply the five-step framework in determining the nature of any engagement which it investigates and, where it is determined that the MSC structure is simply a vehicle through which a de facto contract of service is arranged, will require the end-user to collect and remit Class A PRSI on any remuneration paid to the MSC.

For taxation purposes, employees of MSCs will generally, upon application of the five-step framework, be regarded as employees of the MSC for tax purposes even where they are providing services to a different end-user.

8.3.3 Identifying the employer

In some cases, applying the five-step framework, the owner/director or worker/shareholder involved in either a PSC or an MSC may be genuinely self-employed. This is unlikely to be the position for taxation purposes as officeholders are always subject to PAYE. For PRSI purposes, in some cases a contract of service situation will, as set out above, be understood to exist between the worker and the end-user after analysis of the entire factual matrix of the engagement. Also, in some cases of self-employment, a level of dependency can develop between the worker and the end-user over a period of time, so that an engagement that commenced as a contract for service (self-employment) may evolve into an effective contract of service (employer/employee).

The key point in relation to cases where intermediary structures are used is that the employment relationship will be subject to the same factors/legal tests outlined in Section 5 when determining whether the worker is self-employed or an employee. In looking at all the facts and circumstances of the case, it is possible that a decision-maker or adjudicator may determine that the end-user is, in fact, the employer for PRSI purposes. Each case is determined on its own facts.

For taxation purposes, Revenue cannot, except for limited circumstances provided for in tax legislation, “look through” corporate structures.

An end-user who is found, for PRSI purposes, to be the employer by the Department of Social Protection will be required to return employer and employee PRSI at Class A. While PRSI is normally collected through the PAYE system, in circumstances where an intermediary arrangement continues in place, this cannot be done, and the special collection systems will apply.

8.4 Workers in the digital/gig economy

New forms of work have emerged in the so-called ‘digital/gig/platform/crowd’ economies. The emergence of these new forms of work can pose a challenge in determining whether a ‘contract of service’ or a ‘contract for services’ exists because traditional lines between employers and workers are becoming blurred.

Although the method of engagement of these workers might be different from traditional methods because of the use of modern technology, they will still be categorised as being either an employee or self-employed. Unlike in certain other jurisdictions, this binary approach continues to apply in Ireland. In determining the employment status of such workers, the same approach is taken as with other workers to decide if they are employed under a contract of service, or a contract for services. The essential legal tests or factors set out in the preceding sections are still used and are still relevant to deciding whether a ‘gig’ worker is an employee or is self-employed.

Some workers in the digital economy are genuinely operating in an autonomous, independent, self-employed capacity. Others, however, are engaged as employees in a contract of service situation. Each case must be considered entirely on its own merits upon application of the five-step framework.

9. Consequences arising from the determination of employment status

A worker's status as an employee or as a self-employed person affects:

- The way in which tax, USC and PRSI is payable to the Collector-General
    - As an employee, the worker will have income tax, USC and PRSI deducted from their income through their employer's payroll system
    - A self-employed worker is obliged under self-assessment to pay preliminary tax and file their own income tax returns using the Revenue Online System (ROS)
- Entitlement to social welfare benefits
    - Self-employed persons are entitled to most of the same benefits and entitlements including pensions, disability, caring and maternity/paternity and parental benefits available to employed persons. There are however some exceptions most notably self-employed people are not eligible to claim Illness Benefit. Also, separate Jobseeker Benefit arrangements apply
- Rights and entitlements under certain employment legislation
    - An employee has rights in respect of working time, holidays, maternity/parental leave, protection from unfair dismissal etc. A self-employed person does not have these rights and protections. (It should be noted that a self-employed person is entitled to avail of the protections provided by the Employment Equality Acts once s/he has a contract to execute any work or service in a personal capacity for the other person)
- Public liability in respect of the work done
    - Generally, an employee will be covered by their employer's public liability insurance, whereas a self-employed person is expected to hold their own insurance.

10. False/Bogus self-employment

'False/Bogus self-employment' is a term used to describe when a worker, who is in fact engaged under an employee contract of service, is knowingly recorded and reported to the Revenue Commissioners and the Department of Social Protection as if they were operating under a self-employed contract for services. This is a criminal offence giving rise to a loss of PRSI and taxation income and subject to significant sanctions under the Social Welfare Acts.

It is important to note that the extent to which a worker may or may not be happy with their contracted arrangement (in some cases being recorded as self-employed may benefit the worker financially) is not a determining factor in deciding the correct employment status. The reality of the working arrangements is key, as assessed through use of the legal tests/factors set out in the preceding sections and as applied to the particular facts of each case.

Ireland operates a binary system whereby a worker is either an employee or is self-employed, albeit that each decision-making body may, in some situations, come to a different position, based on the fact that each entity operates within its own legislative framework. The Competition (Amendment) Act 2017 provides a definition of 'false self-employed worker' and 'fully dependent self-employed worker', but the provisions apply only in the context of collective bargaining by a specific set of workers, namely actors engaged as voice-over actors, musicians engaged as session musicians and freelance journalists. The definitions are not used in determining employment status for other purposes.

11. PRSI arrears

Where a determination by the Department of Social Protection is made that a worker has been incorrectly classified as being self-employed for PRSI purposes, the employer will be required to pay the relevant PRSI contributions for the employee(s) for the full period in question and may be subject to a range of penalties under the Social Welfare Consolidation Act 2005. There is no limitation on the period of retrospection.

12. Assistance and contact information

Where there are difficulties in deciding the appropriate status of an individual or groups of individuals, the following organisations can provide assistance:

For matters relating to decisions on employment status for PRSI purposes, contact

Scope Section
Department of Social Protection
Áras Mhic Dhiarmada
Store Street
Dublin 1
D01 WY03

Tel: +353 (0)1 673 2585 (9am-5pm)

Email: scope@welfare.ie

Website: www.gov.ie/en/organisation/department-of-social-protection/#

For matters relating to tax, contact

Revenue at www.revenue.ie/en/contact-us/index.aspx
or through MyEnquiries in ROS or MyAccount

For matters relating to employment and equality rights, contact

Workplace Relations Commission
Information and Customer Service
O'Brien Road
Carlow
R93 E920

Tel: +353 (0)59 9178990 or 0818 80 80 90

Website: www.workplacerelations.ie

For matters related to Safety, Health and Welfare at Work

It is also important to note that the Safety, Health and Welfare at Work Act 2005 applies to all workers on a premises, regardless of their employment status. Employers and employees all have duties under the Act. The Health and Safety Authority (HSA) is the statutory body charged with ensuring compliance in this area.

Please see the Health and Safety Authority homepage for more information and contact details.

Appendix 1 – Legal definitions of 'employed' or 'self-employed'

There is no single, clear, unified legal definition for the terms 'employed' and 'self-employed' in Irish or EU law. In addition, the definition of a "contract of employment" differs in different pieces of legislation (e.g., Payment of Wages Act 1991, Organisation of Working Time Act, 1997 etc.).

At European Union level, a 'worker', who enjoys freedom of movement under Article 48 of the Treaty establishing the European Community, is understood, based on European Court of Justice case law in the following way:

> **'The essential feature of an employment relationship…is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.'**
> (Deborah Lawrie-Blum v Land Baden-Württemberg, Case 66/85 (1986)).

The question of whether a person is an employee or is self-employed for the purposes of Irish employment rights legislation depends on the definition contained in each instrument, for example, the Employment Equality Acts, health and safety legislation, the National Minimum Wage Act, the Unfair Dismissals Act etc.

The question of whether a person is an employee or is self-employed for the purposes of Irish PRSI depends on the reality of the situation in which they are working, in accordance with the legal tests/factors set out in this Code.

The question of whether a person is an employee or is self-employed for the purposes of Irish tax legislation also depends on the reality of the situation in which they are working, in accordance with the legal tests/factors set out in detail in the Tax and Duty Manual 05-01-30 which is available here.

An Roinn Coimirce Sóisialaí
Department of Social Protection

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

WRC
An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

This booklet has been compiled by the Department of Social Protection,
the Office of the Revenue Commissioners, and the Workplace Relations Commission.