



# Self-employed or not self-employed...



## that is the question!

**At what point does a self-employed person become employed? SARAH BUXTON looks at some of the most important considerations for many people working within dental practices?**

One issue which continues to be prominent in the dental industry is whether Hygienists or Therapists should be self-employed or employed.

Ultimately, it is up to an Employment Tribunal to decide whether one is employed or not. However, there are guidelines which have been set by the previous cases before the Employment Tribunal which indicates the considerations the tribunal will have mind to when deciding whether someone is self-employed or employed. It will look at:

- Is there is a contract in place. Without a Self-employed Agreement in place, it is more than likely that the Employment Tribunal will find a Self-employed/Hygienist/Therapist to be an employee
- Whether the self-employed has to take on the work personally, rather than sending a substitute
- If the Practice Owner has a significant degree of control, or right of control, over the self-employed
- Whether the self-employed is paid regularly
- Whether the self-employed works from the Practice Owner's premises and uses the Practice Owner's equipment and/or facilities
- If the self-employed is integrated into the business (for example, the self-employed is subject to the practice's disciplinary and grievance procedures.

For many self-employed persons there are numerous advantages why one would want to be an employee opposed to a self-employed person and of course there are two sides of the coin; these are all the reasons why a dental practice owner would want a self-employed to remain self-employed. Here are just a few benefits.

### **The Right Not To Be Unfairly Dismissed.**

An employee is granted certain important legal rights which do not apply to self-employed persons and one of those legal rights is the right not to be unfairly dismissed. After one year of continuous service an employee has the right not to be unfairly dismissed, unlike a self-employed person who can have his/her contract terminated by the notice set out in the Contract, usually three months.

An employer can dismiss an employee for five fair reasons which are: conduct, capability, redundancy, legality and "some other substantial reason". However before dismissing an employee an employer must be able to show that it was reasonable to dismiss an employee for one of those five reasons. This means that a fair procedure needs to be followed before deciding to dismiss.

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