

“Self-employed persons are not granted as much protection by the law because they are seen to be their own boss. The law does grant certain protection in some cases of discrimination, and health and safety”

This means it is a lengthy and costly procedure for an employer to dismiss an employee and is becoming increasingly difficult for an employer to dismiss an employee. The consequences of an employee being unfairly dismissed is that the employee could be awarded at the Employment Tribunal (should a claim be submitted to the Employment Tribunal) in the region of 6 months to 2 years' salary.

#### Statutory Redundancy Pay

If an employee has a least 2 year's service and the role of the employee becomes redundant an employee will be awarded a redundancy payment, which is an award for past services. A redundancy payment is computed by applying a formula based on the employee's age, the length of service and a week's gross pay. Some employers even provide an enhanced redundancy payment, so an employee can be awarded more than the statutory minimum.

A self-employed person is not entitled to any redundancy pay, in effect this means that after 2 years' service a self-employed person can be dismissed with notice, without receiving any payment for his/her past services.

#### Annual Leave

The Working Time Regulations currently state that an employee is entitled to at least 5.6 weeks' paid annual leave each year. Self-employed persons are not entitled to any paid annual leave. However, self-employed persons should not be limited to the amount of leave that they are able to take and therefore is unlimited. An employee is contracted to take a limited amount of annual leave.

#### Sick Pay

An employee is entitled to receive Statutory Sick Pay (SSP) from the fourth day of illness. An employee is entitled to up to 28 Weeks SSP in any period.

Self-employed persons are not entitled to receive SSP and it is highly recommended that self-employed persons take out insurance (at his/her own expense) to cover the fact that one may be ill.

#### Request Flexible working

An employee, who has 26 weeks' continuous service has the right to make an application for flexible working, subject to satisfying various other criteria.

This means that an employee can ask for flexible working in order to care for a child or an adult who is in need of care and dependant on the employee. An employee may request a change to the hours worked, or a change to the times worked or ask to work from a different location.

#### Tax

A self-employed person must register with HMRC, and has to submit his/her own annual tax return and account for his/her own tax and National Insurance payments. This is added responsibility and can be quite stressful. An employee does not usually have to worry because all tax is dealt with by the employer.

#### Written contract

It is important to have a written self-employed Self-employed Agreement in place to include all these self-employed indicators. However, even with a written agreement, if a person is treated like an employee it is the case that they will be found to be an employee such as in the case of *Rodrigues v Whitecross Dental Care Limited and Integrated Dental Holdings Limited*. In this case, the Employment Tribunal looked at all of the various determining factors for an employment relationship to exist and considered each of them in turn.

Even though the Self-employed Agreement contained various self-employed indicators, it was decided that Mr Rodrigues was treated like an employee and therefore the relationship between Whitecross and Mr Rodrigues in fact amounted to a contract of employment. This case does prove that it is important that a self-employed person must be treated as though they are self-employed.

Self-employed persons are not granted as much protection by the law because they are seen to be their own boss. The law does grant certain protection in some cases of discrimination, and health and safety. The upshot of being a self employed person is that there is degree of flexibility. However, for security and long term benefits an employee wins hands down. ■

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Sarah is a Director and Employment & HR Solicitor at FTA Law, who specialise in acting for dentists. The Team at FTA Law advise Dental Principals, self-employed persons and Practice Managers on all of the legal aspects of buying, selling and running dental practices.

With extensive experience in the dental sector the firm is ideally placed to understand and respond to the needs of dental practitioners and practice managers.

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