

## Business

# Employed vs self-employed

For security and long-term benefits, being employed wins hands down, **Sarah Buxton** says

One issue that continues to be prominent in the dental industry is whether associates 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 that have been set in previous cases before the Employment Tribunal, which indicate the considerations the tribunal will have in mind when deciding whether someone is self-employed or employed. It will look at:

- Is there a contract in place? Without an associate agreement in place, it is more than likely that the Employment Tribunal will find an associate to be an employee
- Whether the associate 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 associate
- Whether the associate is paid regularly
- Whether the associate works from the practice owner's premises and uses the practice owner's equipment and/or facilities
- If the associate is integrated into the

business (for example, the associate is subject to the practice's disciplinary and grievance procedures).

For many associates there are advantages to being an employee as opposed to a self-employed person, but of course there are two sides of the coin.

## The right not to be unfairly dismissed

An employee is granted certain important legal rights that do not apply to self-employed persons and one of those 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.

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 it was reasonable to dismiss an employee for one of those reasons. This means a fair procedure needs to be followed before deciding to dismiss.



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

## Statutory redundancy pay

If an employee has at least two years' service and their role 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 two 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 five-six 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 it's 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.

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 associate 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 associate 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 certain 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. **D**

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