



Employee v's Contractor

29 August 2024

Following the Supreme Court's unanimous decision in '*The Revenue Commissioners v Karshan (Midlands) Ltd. t/a Domino's Pizza*' Revenue have published 'Guidelines for determining employment status for taxation purposes'. All employers engaging contractors as part of their business should now review their contracts and how these relationships are managed to ensure compliance with Revenue requirements.

In Karshan it was claimed by the Company that their delivery drivers were working under contracts for services and should be classed as self-employed. Revenue claimed that these individuals ought to be treated as employees under a contract of service. The Supreme Court set out a **five-step decision making framework** that should be applied to each relationship to determine the taxation status of each worker and this has now been incorporated into the Revenue Guidelines. Considering the full circumstances of the case, and applying the five-step framework, the Supreme Court held that the workers were employees for taxation purposes.

Businesses engaging individuals need to correctly determine whether they are employed, or self-employed based on the facts and circumstances of each relationship and payment.

Five-step decision-making framework:

The first three questions act as a filter, and a contract of employment cannot exist if any of these are answered negatively. If answered affirmatively, then questions four and five must be considered.

1. Does the contract involve the exchange of wage or other remuneration for work?

Firstly, a valid contract must have been entered. This requires the payment of a wage or other consideration. There must be some kind of promise by the worker to work for the employer in question. Payments to volunteers for expenses incurred and arrangements that are truly casual or domestic in nature would not create a legal relationship.

Provided there is payment by a business to a worker for a service, whether in writing or not, and whether this work is once-off or on a continuous basis, the contract is capable of being an employment contract.

2. Has the worker agreed to provide their services to the employer personally?

The Court found that personal service is a requirement for a contract of employment. A limited degree of substitution is possible such as where the worker is unable to carry out the work or with the consent of

another person who has an absolute and unqualified discretion to withhold consent. It is important to consider the level of substitution possible, the extent the business can decide who the worker hires and who controls the substitute.

The more restrictions imposed on the freedom of a worker to appoint a substitute, the more likely it is that it will be a contract of employment.

3. Control- Does the employer exercise sufficient control over the putative employee to render the agreement capable of being an employment agreement?

Control refers to the ability, authority or right of a business to exercise control over a worker concerning what work should be done, how, when and where it should be done. There must be a minimum level of control before a relationship can amount to an employment contract.

4. Look at all the circumstances of the employment

If the first three questions are answered affirmatively, then the entire facts and circumstances must be considered. Every case will depend on its facts and all features of the relationship must be looked at to correctly determine whether it is a contract of employment.

5. Are there any legislative provisions that require the addition to or supplementation of the framework?

Consideration needs to be given to any legislation that may supplement or adjust any of the above questions. If there is some specific piece of legislation under which employment status is being determined this may require modification of the above five-step framework.

What the decision means for businesses:

There is now a clear decision-making model to follow to determine the employment status of each worker for taxation purposes.

Whitney Moore invites businesses to take proactive steps in aligning with the new employment guidelines. For expert legal guidance and support in navigating these changes, please contact [Emma Richmond](#) or your usual Whitney Moore contact.