

Sub-Contractors – Are they Self-Employed or Workers?

In a recent case the Supreme Court ruled that Gary Smith, who was engaged by Pimlico Plumbers was in fact a 'worker' and not self-employed.

So what is a worker?

Worker status does convey many employment rights such as minimum wage, holiday and sick pay. However, HMRC cannot go after businesses for PAYE & Class 1 NIC on individuals engaged under worker contracts.

What determines worker status?

A number of factors were taken into account in the above case:

Personal service - Mr Smith clearly provided a personal service under a contractual arrangement so that only another Pimlico operative could replace him. There was a dominant focus in the contractual wording on personal performance, which in the court's eyes overrode any substitution clause.

The contract imposed a high level of control over Mr Smith, even extending to his appearance, the cleanliness of his company uniform, driving a branded van and minimum hours worked. Restrictions were also placed on Mr Smith in terms of undertaking competitive work outside his work with the appellant.

Use of language inappropriate to a contract for services – The court found that use of words such as 'wages', 'dismissal ' and 'gross misconduct' were inconsistent with a contractor and client/customer relationship. Because of the heavy weighting of personal service and the control exerted over him, it was found by the court not possible for Pimlico Plumbers to be either a client or a customer of Mr Smith despite the fact that he was free to accept other work if none was forthcoming from Pimlico Plumbers.

In this case, control and substitution determined worker status. However, Mutual Obligation should also be considered – does the employer oblige themselves to offer work and is the worker obliged to accept the work?

Get in touch with your usual contact at Galloways for help or advice.

Contact your team at Galloways today!

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