



Employment relationship guidelines for employees, workers, self-employed services and Personal Services Companies (PSCs)

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1. Introduction

- 1.1. Determining an individual’s relationship with the University is complex and is determined by employment law. It is not a matter of choice by the individual, Faculty, School, Service or the University to decide the employment status of an individual, though the intentions of those involved and the terms of contracts drawn up at the outset of a working relationship will be relevant.

- 1.2. The decision on which employment group an individual falls into will depend on the relationship between the individual and the University and is determined by a number of legal tests, which include:
 - whether there is a contract at all between the University and the individual;
 - whether the individual is required to provide services personally;
 - the degree of control over the service provided – who decides when and how the work is done; and
 - whether there is a mutuality of obligation on behalf of the University or the individual, i.e. whether work has to be offered and carried out.

- 1.3. An individual providing work activities will fall within one of the three employment status groups below, determined by law. The employment group they fall into will also determine their employment rights and responsibilities in the workplace, and how the deduction of income tax and National Insurance contributions are calculated.

The three employment status groups are:

- Employee
- Worker
- Self-employed

- 1.4. The fact that an individual may be deemed to have a particular employment status for tax purposes is NOT necessarily determinative of their employment status for employment rights purposes. The HMRC ESS tool determines status for tax purposes only e.g. someone determined as “employee” could be a “worker” or even, in some cases, self-employed for employment rights purposes.
- 1.5. From 6 April 2017, public sector bodies including the University are required to determine whether intermediaries legislation (Inland Revenue rule IR35) applies to self-employed individuals. The University is required to undertake an Employment Status Service (ESS) indicator test for each engagement of a self-employed individual.

2. Employment status definitions

2.1. Employee

An employee is an individual who works for an employer under a contract of employment, which is known as ‘a contract of service’. Under a contract of employment, there must be ‘mutuality of obligations’ between the employer and the employee, i.e. the employer is obliged to offer and pay the employee for the work, and the employee is obliged to turn up and undertake the work personally. Employees are entitled to all statutory employment rights and are protected by a whole range of legal provisions, including payment of wages, dismissal and redundancy.

2.2. Self-employed

- 2.2.1. A self-employed individual provides the employer with his or her services, but remains independent. The contract between the individual and the employer is ‘a contract for services’. Typically there may be an ability to provide alternative individuals to carry out the work in question. Services may also be provided through a company. Self-employed workers are not entitled to statutory employment rights.
- 2.2.2. For income tax and national insurance purposes, the employment relationship is ultimately determined with specific reference to HMRC regulations. The fact that a person is registered as self-employed does not necessarily mean that the work to be provided on behalf of the University is of a self-employed nature.
- 2.2.3. To help determine whether an individual is self-employed, the HMRC Employment Status Service (ESS) tool must be completed by the engager before any engagement is entered into with the individual. The ESS tool can be found at <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>.
- 2.2.4. The ESS outcome will determine if the individual is either an employee or self-employed, as well as to determine when Intermediaries Legislation (IR35) applies.

Any individual must be engaged or employed appropriately and in line with University financial and HR policies, regulations and processes. Where IR35 is deemed to apply the University will make deductions of tax and National Insurance in line with HMRC regulations.

2.2.5. Occasionally, the ESS tool will indicate ‘undetermined’ in which case the individual completing the assessment should contact HMRC directly in order to establish a determination.

2.3. Workers

2.3.1. Workers are a hybrid category that falls between an employee and self-employed. A worker is an individual who works not under a contract of employment but under ‘a contract for services’. Workers are however obliged to provide their service personally. There is no obligation for workers to accept and undertake work offered. Similarly, there is no obligation by the employer to offer work. Workers are entitled to some limited employment rights, such as protection under the Working Time Regulations (including holiday) and the minimum wage.

3. Summary of employment relationship determining factors

Employee	Self-Employed	Worker
Employer obliged to offer and pay the employee for the work.	Can decide how, when and where to do the work.	Employer has no obligation to offer any work.
Employee is obliged to turn up and undertake the work personally.	Can hire someone else to do the work at their own expense.	Worker does not have to accept work offered but once accepted must provide their services personally.
It is, using old fashioned terminology, a “master and servant” relationship.	They risk their own money/are in business on their own account.	
They work under the control and/or supervision of a manager or supervisor.	Agree to do the work for an all inclusive fee and usually have to correct unsatisfactory work in their own time and at their own expense.	Whilst at work they are under the supervision of a manager or supervisor.
They are more likely to be paid a salary but may be paid on an hourly or piece rate basis.	Provide the main items of equipment they need to do the work.	They are usually paid on an hourly rate or piece rate basis.

NOTE: some individuals may not fall clearly into any of these categories. Some may be deemed to be “volunteers” or “voluntary workers” for example, especially if they are unpaid/expenses only.

Further information and advice should be obtained from the Faculty/Service HR Manager or Procurement.

4. Employment groups at the University of Leeds

- 4.1. The University needs to ensure that it applies appropriate rules of engagement for anyone providing work activities on its behalf. This is not only to provide a fair and equitable framework for all its workers but also to ensure that, as a responsible employer, it complies with its legal obligations.
- 4.2. Appendix 1 summarises examples of typical roles carried out at the University and the employment group that they are likely to fall into. These employment groups and descriptions are defined by employment legislation and have also been drawn up with specific reference to HMRC regulations. Therefore, engagers must abide by these procedures before any engagement is entered into with an individual and are responsible for ensuring that consideration is given to the employment status at an early stage of the engagement process (rather than when the work has been completed).

5. Summary table of contractual arrangements and associated payment forms

Contractual Form	Nature of Engagement	Payment Forms
SS1 Payment for Casual Workers	To pay individuals where the duration of engagement is one week or less	SS1
SS2 Application form and the Principal Statement of the Terms & Conditions of Employment for Short Term Temporary Staff	Where an individual is needed for regular support for a period of up to 3 months	Timesheet/ Salaried
SS4 Worker Agreement	Where there is a need for on-going flexible/ad hoc support and there is no mutuality of obligation on either side to offer/accept work	Timesheet
Exempt Payment Form Patient and Public Involvement (PPI), Post Graduate Examining, Actors and Musicians (Paid per performance)	Where there is a need for an individual to provide specialist services to the University and fall into one of these specific tax and NI exempt categories	Exempt Payment Form
Standard University Purchasing Terms & Conditions Available at http://purchasing.leeds.ac.uk/info/40/documents_and_forms/36/terms_and_conditions	Where there is a need for an individual to provide specialist services to the University and are self-employed.	Paid via procurement unless IR35 applies: IR35 Payment Form
TA-EMP 08 Application form and the Principal Statement of the Terms of Employment for Hourly Paid Teaching Staff (other than students)	Where there is a need to engage specialist individuals on an hourly paid basis to provide teaching	Salaried

6. Sources of Help

6.1. Faculty/Service HR Managers and Officers

Your local HR Manager/Officer can help to determine employment relationships within Faculties and Services and provide advice and guidance on engaging individuals on a self-employed, worker or employee basis. HR Managers/Officers will advise on contractual arrangements for employees, advise on best practice and support engagers in the use of the HMRC ESI and ESS tools.

6.2. Procurement/Faculty and Service Finance teams

Procurement can support the engagement with suppliers/vendors including self-employed individuals, including providing specific advice relating to existing purchasing frameworks, new vendor set-up, contractual arrangements, payment terms and invoicing. Procurement/ Faculty & Service Finance teams will advise on contractual arrangements for suppliers/vendors, advise on best practice and support engagers in the use of the HMRC ESI and ESS tools.

6.3. Payroll Office

Payroll can provide advice and guidance relating to Income Tax and National Insurance, payment forms and appropriate use of Fees Forms for self-employment, and will act as liaison with the HMRC Employment Status team on behalf of the University.

Appendix 1: Examples of typical roles carried out at the University and the employment group they are likely to fall into.

Employees

<i>Employment Group</i>	<i>Example Roles</i>	<i>Characteristics</i>	<i>Contract Type</i>	<i>Payment Method</i>	<i>Responsibility for SAP etc</i>	<i>Notes</i>	<i>Deduction of Tax & NI</i>
Open ended	Lecturers, administrators etc	Standard University employment. This should be the most frequently used form of University employment.	Full employment contract issued by central HR	Monthly payroll	HR		Tax - Yes NI - Yes
Open ended-fixed funding	Research staff	These appointments are used where the funding for the post is fixed term and the appointment is an individual's second or subsequent contract and where they have three or more years continuous employment with the University.	Full employment contract issued by central HR	Monthly payroll	HR	University has an obligation to consult with the individual and through ESRG on the expiry of funding.	Tax - Yes NI - Yes

Employment Group	Example Roles	Characteristics	Contract Type	Payment Method	Responsibility for SAP etc	Notes	Deduction of Tax & NI
Fixed-term	Research staff, maternity leave cover etc	May only be justified in law when used to achieve a legitimate business objective. It should be noted that staff who have had more than one successive contract at the University and have over three years continuous service will typically be offered open ended contracts which are subject to fixed funding, unless there is an objective justification for the post to remain fixed term. The University's Procedure to Support the Employment Security of Staff on Fixed Funding or Fixed Term Contract can be found at http://hr.leeds.ac.uk/FF-FTC_emp_security .	Full employment contract issued by central HR	Monthly payroll	HR	University has an obligation to consult with the individual and through ESG on the expiry of appointment	Tax - Yes NI - Yes
Short term temporary staff ¹	Clerical assistance Technical assistance Research assistance etc	Engaged where it is necessary to fill a short term vacancy of up to three months, or to cover peak workload periods, and due to the nature of the role a regular work pattern is required	Form SS2 completed by Faculties/Schools/ Services	Can be paid either by timesheet or salaried through the monthly payroll	HR	Arrangements apply to all staff groups Maximum duration of these appointments is 3 months. The University is not obliged to consult with individuals on the expiry of the fixed term contract.	Tax - Yes NI - Yes

¹ Before engaging individuals through these arrangements, Faculties, Schools and Services may wish to consider using the services of Joblink, administered through Leeds University Union. Further information is available at www.leedsuniversityunion.org.uk/jobs.

Employment Group	Example Roles	Characteristics	Contract Type	Payment Method	Responsibility for SAP etc	Notes	Deduction of Tax & NI
Hourly paid Lecturers/ Teaching Assistants	Hourly paid teaching staff	Normally employed to teach specialist modules or to cover the teaching of academic staff	Form TA EMP08 completed by Faculties/ Schools/Services	Paid monthly in equal instalments during the teaching periods	HR	Where appropriate appointed to annual contracts, although they normally only work during teaching periods.	Tax - Yes NI - Yes
Instructors Tutors	Hourly paid e.g. coaches or mentors	The individual is not self employed, they are obliged to work when required and there is a mutuality of obligation	Form SS2 completed by Faculties/Schools/ Services	Can be paid either by timesheet or salaried through the University payroll	HR	Maximum duration of these appointments is 3 months. The University is not obliged to consult with individuals on the expiry of the fixed term contract	Tax - Yes NI - Yes

Workers

Example Roles	Characteristics	Contract Type	Payment Method	Responsibility for SAP etc	Notes	Deduction of Tax & NI
Open day assistants ²	Engaged to complete a one off piece of work	Form SS1 completed by Faculties/Schools/Services	Payment via monthly payroll.	HR	HMRC regulations note that the duration of engagement must be less than one week (Monday –Sunday); must be the only employment or engagement in the current tax year	Monthly payroll Tax - Yes NI - Yes
Reception cover ² Filing ² Student Hosts ²	Engaged on an irregular or flexible basis	Form SS4 completed by Faculties/Schools/Services	Monthly payroll – payment made following submission via timesheet	HR	These contracts should not be used for regular ongoing work where both parties require/expect work. Where such a work pattern does develop consider moving the worker to another employment group. University is not obliged to consult with individuals on the expiry of the work.	Tax - Yes NI - Yes
Postgraduate Research Students Engaged in Teaching	Engaged on an irregular or flexible basis	Confirmation of Registration form completed by Faculties/Schools	Monthly payroll	HR	PGRs can be registered to teach whilst they are registered as a postgraduate research student at the University.	Tax – Yes NI - Yes

² Before engaging individuals through these arrangements, Faculties, Schools and Services may wish to consider using the services of Joblink, administered through Leeds University Union. Further information is available at www.leedsuniversityunion.org.uk/jobs.

<i>Example Roles</i>	<i>Characteristics</i>	<i>Contract Type</i>	<i>Payment Method</i>	<i>Responsibility for SAP etc</i>	<i>Notes</i>	<i>Deduction of Tax & NI</i>
Undergraduate level: Examiners Moderators Question Setters (For postgraduate level see self employed section below)	Engaged on an irregular or flexible basis	Form SS4 completed by Faculties/Schools/Services	Monthly payroll	HR		Tax – Yes NI - Yes

Self-Employed

Please seek advice from procurement, consider whether the activity falls under one of the University's mandatory procurement frameworks and take into account University financial regulations prior to engagement or entering into contractual negotiation.

<i>Example Roles</i>	<i>HMRC regulations</i>	<i>Contract Type</i>	<i>Payment Method</i>	<i>Responsibility for SAP etc</i>	<i>Notes*</i>	<i>Deduction of tax and NIC</i>
Consultants Contractors Public Lecturers Lecturers Instructors Tutors/ teachers Specialists e.g. archivists, editors, writers, proof readers, transcription services.	<p>An ESS assessment must be completed to determine self employed status and status for tax purposes.</p> <p>Where Intermediaries legislation applies (IR35) payments for labour will be subject to deductions of tax and National Insurance via PAYE. Expense payments may also be subject to tax where these cover travel from home to work.</p> <p>Where PAYE is applied, additional costs of engagement will be charged to the engaging department.</p> <p>Where IR35 applies and the individual is paid via a 3rd party e.g. agency, the University is responsible for confirming that IR35 applies to the 3rd party but not for ensuring payment of tax and National Insurance under PAYE. In this instance payments would be made to the 3rd party and they would be responsible for administering PAYE.</p>	Covered by Standard University Procurement Terms	<p>Where Intermediaries legislation applies (IR35) – individuals will complete an IR35 payment form, submitting with an accompanying invoice to payroll via their host department/engager.</p> <p>Payments will be made within 30 days of submission of approved form.</p> <p>P45 will be issued on completion of final payment form.</p>	Payroll	Please note that the individual will not be an 'employee' of the University and will not be eligible for associated rights of an employee e.g. annual leave, sick pay etc.	<p>Where Intermediaries legislation applies (IR35)</p> <p>Tax - Yes NI – Yes</p>
		Covered by Standard University Procurement Terms	<p>Payments to companies are made via standard procurement process, in line with 30 day payment terms.</p> <p>Invoices are submitted to the University (Accounts Payable) for payment at agreed intervals.</p>	Procurement		<p>Where Intermediaries legislation (IR35) does not apply</p> <p>Tax - No NI - No</p>

Example Roles	HMRC regulations	Contract Type	Payment Method	Responsibility for SAP etc	Notes*	Deduction of tax and NIC
Patient and Public Involvement (PPI) in research	ESS not required – specific category exempt from tax and National Insurance	Exempt Payment form	Exempt Payment form	Payroll		Tax - No NI - No
Actors and Musicians	Paid by performance ESS not required – specific category exempt from tax and National Insurance	Exempt Payment form	Exempt Payment form	Payroll	Paid by performance	Tax - No NI - No
Postgraduate level: Examiners Moderators Question Setters (For undergraduate level see workers section above)	ESS not required – specific category exempt from tax and National Insurance	Exempt Payment form	Exempt Payment form	Payroll	Postgraduate level.	Tax - No NI - No

Non Employment Groups

Example Roles	Characteristics	Contract Type	Payment Method	Notes
Agency Workers	<p>Agency workers are not employees of the University and are paid directly by the Agency. Their terms and condition of employment are also determined by the Agency</p> <p>Although there is no limit on the duration of the engagement of agency workers they are normally engaged to cover short term vacancies as it is not economically viable to maintain such an arrangement for long periods. Therefore, consideration should be given to making an appointment to another appropriate employment group, paid through the University</p>	Agreement made between Faculty/School/Service and the Agency	Agency paid as a vendor via Purchasing	Since October 2011 regulations have been in force to provide agency workers who have been engaged at the University or a period of 12 weeks or more with the right to receive the same basic pay and holiday entitlement as University employees.
Volunteers/ voluntary workers	Usually paid expenses/costs only, may be provided with accommodation or subsistence (Research, Lay, Clinical Trials Participants)	As required e.g. letter to outline arrangements	Expenses via Fees Form 1	Payments in excess of expenses may move away from this status. In such cases they are more likely to be a Worker or employee.

Appendix 2: Summary of the terms of engagement for ‘workers’ and terms and conditions of employment for ‘short term temporary staff’

These arrangements are applicable to all groups of staff. Please note that while payments made to Personal Service Companies or those individuals deemed to be providing services via a self-employed relations are subject to PAYE (deductions of tax and National Insurance) individuals are not employees.

TERMS OF ENGAGEMENT	WORKERS		EMPLOYEES
	CASUAL	WORKER	SHORT TERM TEMPORARY STAFF
	Need to complete a one off task and where the duration of the assignment is one week or less Contract for Services	Need for on-going flexible/ad hoc support Contract for Services	Need for regular support for a period of up to 3 months Contract of Services
Advertising	Advertising not necessary	Vacancies may be advertised locally within Faculties, Schools, Services	Vacancies may be advertised locally within Faculties, Schools, Services
Authorisation – Pre requirement	Yes	Yes	Yes
Duration	One week or less	No limit to the duration that these contracts can be used	More than one week, but less than 3 months. Any extension beyond 3 months must be based on a standard University fixed-term/open ended employment contract.
Contracts	Form SS1 – issued by Faculties, Schools, Services	Form SS4 – issued by Faculties, Schools, Services	Form SS2 – issued by Faculties, Schools, Services
References	Employment references not required	Yes - Faculties, Schools, Services will be responsible for obtaining employment references for shortlisted candidates.	Yes - Faculties, Schools, Services will be responsible for obtaining employment references for shortlisted candidates.
Status	No employment relationship	No employment relationship	Employment relationship
Equal Pay	Subject to equal pay for work of equal value legislation	Subject to equal pay for work of equal value legislation	Subject to equal pay for work of equal value legislation.
Holiday Pay	No entitlement	Entitled to 28 days (pro rata) statutory holiday under the WTR . Worker can exercise their right to paid holiday by request in writing to the Head of School/Service. Alternatively, holiday pay may be paid on a pro-rata basis at the end of the engagement.	Entitled to University holiday pay calculated on the basis of 40.50 days (pro-rata). Payment for holiday to be made on the expiry of appointment, or on request at the time of taking holiday.

TERMS OF ENGAGEMENT	WORKERS		EMPLOYEES
	CASUAL	WORKER	SHORT TERM TEMPORARY STAFF
		First year of the engagement, worker may only take as much holiday as has been accrued at the relevant time.	
Immigration Checks	No	<p>Yes - Faculties, Schools, Services will be responsible for carrying out document checks to confirm that individuals have the right to work in the UK.</p> <p>Where the duration of the engagement is more than 12 months, HR will be responsible for carrying out annual document checks for individuals who do not have permanent leave to remain in the UK.</p>	Yes - Faculties, Schools, Services will be responsible for carrying out document checks to confirm that individuals have the right to work in the UK
Increments	No	No	No
Interviews	No	Yes – at local level in line with the University’s recruitment and selection policy	Yes – at local level in line with the University’s recruitment and selection policy
Job Descriptions required	No	Not required, but may be good practice	Yes
National Minimum Wage	To be paid National Minimum Wage	To be paid National Minimum Wage	To be paid National Minimum Wage
Objective justification for the post being fixed-term	No	No	Yes
Obligation by the individual to accept work	N/A	No	Yes
Obligation by the University to offer work	N/A	No	Yes
Payment Method	One off payment	Zero hours only, paid by timesheet	Timesheet/annual salary

TERMS OF ENGAGEMENT	WORKERS		EMPLOYEES
	CASUAL	WORKER	SHORT TERM TEMPORARY STAFF
Pension Scheme	Not eligible	Not eligible	Optional
Period of Notice	N/A	Arrangement can be terminated at any time by either the Individual or the University by giving one months notice in writing. Standard of performance – if the standard of performance is deemed unacceptable by the University, the agreement can be terminated without notice.	One month
Probation	N/A	No	Optional
Protection in the workplace	Discrimination Health & Safety Whistleblowing Equal Pay National Minimum Wage	Discrimination Health & Safety Whistleblowing Equal Pay National Minimum Wage	Full employment protection
Purpose of Appointment	To carry out one off tasks	To provide flexible and ad hoc support	Need for regular work pattern that is essential to the day to day running of the Faculty, School, Service
Rates of Pay	Must meet National Minimum Wage	Paid at an appropriate rate on UOL pay scales	Paid at an appropriate rate on UOL pay scales
Redeployment	N/A	N/A	N/A
Redundancy Pay	N/A	No entitlement	No entitlement
Requirement to consult through ESRG on the expiry of appointment/funding	N/A	No requirement - not employees	No requirement as the employment is 3 months or less. If the contract is extended beyond 3 months there will be a requirement under our policy to consult on the expiry of appointment.
Requirement to individual consultation on the expiry of	N/A	No requirement – not employees	No requirement as employment is 3 months or less. If the contract is extended beyond 3 months there will be a requirement under our policy to consult

TERMS OF ENGAGEMENT	WORKERS		EMPLOYEES
	CASUAL	WORKER	SHORT TERM TEMPORARY STAFF
appointment/funding			on the expiry of appointment.
Sick Pay	N/A	No entitlement to University sick pay possibly eligible for SSP	No entitlement to University sick pay, but may be eligible to SSP depending on level of NI contributions paid
Statutory Payments e.g. SMP/SAP/SPP	N/A	Statutory Payments if eligible	Statutory Payments if eligible