Employed or Self-Employed Guidance for Employers and Casual Workers in Archaeology

Guide 17

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Are you Employed - Self-Employed or a Worker?

There has been a tradition in some areas of the United Kingdom for archaeologists to work as self-employed individuals (Freelance). Some commercial companies that have grown up in these areas have continued this tradition; others have turned against this practice.

Individuals acting in a self-employed manner submit invoices on completion of work (or perhaps more frequently) and are paid gross of Tax and National Insurance. The individual must manage their own tax returns, prepare accounts and complete self-assessment tax forms. Employees have tax and national insurance removed at source, by their employers, and they should have: contracts of employment; leave entitlement; and other benefits.

But who can choose between these two states of work?

Would the Inland Revenue agree you are truly self-employed or could they assess you as being employed, with the companies perpetuating a tax and National Insurance avoidance scheme?

What are the relevant benefits of the different states, if you are in a position to choose?
A simple test

The Inland Revenue has often circulated a simple test, below, to offer a coarse gauge as to whether you are acting as an employee or as self-employed:

**Employee**
If you can answer 'Yes' to all of the following questions, you are probably an employee.

- Do you have to do the work yourself?
- Can someone tell you at any time what to do, where to carry out the work or when and how to do it?
- Do you work a set amount of hours?
- Can someone move you from task to task?
- Are you paid by the hour, week, or month?
- Can you get overtime pay or bonus payment?

**Self-employed**
If you can answer 'Yes' to all of the following questions, it will usually mean you are self-employed.

- Can you hire someone to do the work for you or engage helpers at your own expense? Do you risk your own money?
- Do you provide the main items of equipment you need to do your job, not just the small tools many employees provide for themselves? Do you agree to do a job for a fixed price regardless of how long the job may take?
- Can you decide what work to do, how and when to do the work and where to provide the services?
- Do you regularly work for a number of different people?
- Do you have to correct unsatisfactory work in your own time and at your own expense?

**Archaeologists; which are they likely to be**

Having undertaken the quick Inland Revenue check above, it is a rare field archaeologist who can credibly claim to be self-employed. A field archaeologist who is told what to do on-site by a supervisor; or a supervisor who is instructed by a site director cannot under the simple Inland Revenue be self-employed.

If they are paid and registered as self-employed they are probably in breach of Inland Revenue regulations.
An archaeologist who could operate as self-employed would be expected to tender for whole contracts and then manage the work themselves. Freelance specialists (artefacts, illustrators, osteologists etc) are potentially the best example of this. They agree a product (the report), a timetable for the works and a fee with their client. After this they go away and undertake the work as they see fit, within the constraints of their contract. On submission of the report they also submit their invoice. A clear self-employed process. While this is possibly true for field staff, it is probably exceptional.

**Why do companies do this?**

Companies may use allegedly self-employed field staff because of inertia; while individual archaeologists may be used to claiming to be self-employed and object to being employees. Alternatively companies may be doing this because they are attempting to avoid:

- paying employers contribution on National Insurance; carrying the administrative cost of running PAYE schemes;
- having to pay staff promptly (invoices can be deferred from payment for 30 days);
- allowing archaeologists to be covered by contracts of employment; allowing archaeologists to gain employment benefits (leave; benefits; job security etc);
- allowing access to pension schemes (stakeholder schemes etc); providing insurance cover for archaeologists (employers insurance cover employees not self-employed).

The apparent benefit to the self-employed archaeologist is the higher day rate than that which employees may receive; although the seeming Extra Cash – can be a red herring, as you have to provide insurance, Tools, you get no holidays or sickness benefits as well as doing your own tax and National Insurance.

Most significant is that the company and individual, in the case of field archaeologists, are most probably acting in breach of Inland Revenue regulations.

**But can I still be a freelance digger**

Technically – yes, but your status would be slightly different, if you are just working on a single project, under instruction from the company, while being unable to work for others, in your time and are paid a fixed per diem rate.

An individual can be classed as a ‘worker’ if:

- they have a contract or other arrangement to do work or services personally for a reward (your contract doesn’t have to be written)
• their reward is for money or a benefit in kind, for example the promise of a contract or future work
• they have a limited right to send someone else to do the work (subcontract)
• they have to turn up for work even if they don’t want to
• their employer has to have work for them to do as long as the contract or arrangement lasts (ie you have a fixed 3 month contract – you have to get 3 months work)

This does give you different rights to a fully self employed individual – ie you get basic holiday rights.

Someone is likely to be a worker if most of these apply:

• they occasionally do work for a specific business
• the business doesn’t have to offer them work and they don’t have to accept it - they only work when they want to
• their contract with the business uses terms like ‘casual’, ‘freelance’, ‘zero hours’, ‘as required’ or something similar
• they had to agree with the business’s terms and conditions to get work - either verbally or in writing
• they are under the supervision or control of a manager or director
• they can’t send someone else to do their work
• the business provides materials, tools or equipment they need to do the work

Liabilities

Any company using self-employed field staff (who are not truly self-employed) are carrying a serious tax and National Insurance liability should they be investigated by the Inland Revenue and found out.

In addition they are in danger of being taken to industrial tribunal by former or current ‘self-employed’ staff who could reasonably claim that they are in fact employees and entitled to the consequent benefits. This is most likely to be tested in the event of accidents or injuries where Employers Liability insurance would NOT cover the supposed self-employed staff and the injured individual would have to test their effective employment status through a tribunal to gain access to the protection of the company insurance provision.

In addition, the workers would find that the Inland Revenue would pursue them for unpaid tax – on additional benefits such as accommodation, transport or daily subsistence payments.
Self-employed liabilities

By being registered as self-employed the individual takes on board the responsibility for tax and national insurance payments, record keeping and financial management. Financial management should include laying monies aside for payments and coping with cashflow problems while waiting for invoices to be met and when not working (inc. holidays).

The bona fide self-employed are also responsible for supplying themselves all equipment and paying for adequate insurance provision for them to work (both in case of them injuring themselves or causing injury to others). A worker may nor require insurance, however, remember that your employment status is different, and although you will have other rights, you will still have to account for additional benefits – including accommodation etc.

Benefits of short-term employees

The abandonment of self-employed status for field archaeologist in those companies that still use this system will not result in a raft of well paid, secure, permanent posts. However, there are a range of benefits that will progressively accrue to the individuals (if avoiding the wrath of the Inland Revenue is not sufficient). The critical advantages of being a short-term employee are:

- a full and proper tax record is established through the respective PAYE schemes;
- full National Insurance contributions, including employers contributions, are made that provide for greater benefit entitlement;
- access to entitlements (sick pay, annual leave, public holidays, maternity leave etc) where posts survive for long enough; coverage by company insurances;
- responsibility for equipment (especially PPE) falling on company.

The life of short-term employees is not a sea of joy; but this style of work has established employment law protecting them and is a stepping stone to better working and employment conditions.

What should you do?

You should run through the quick test from the Inland Revenue:

If you are happy you comply with the self-employed status or are happy to act as a worker (check with the Inland Revenue) ensure you maintain clear records that you are working in this manner. Manage your paperwork to keep details of contracts agreed and show that you act in an independent manner.
If you think you are an employee discuss this with your ‘employer’ and potentially the Inland Revenue.

**DO NOT** accept excuses that this is how it is or everyone else wants it like this. You must comply with the law; as must the employer. The issue of being an employee is also a matter of great importance for your personal safety and financial integrity.

All employers run some form of PAYE system which they could expand to cover you; they are simply excluding you for their corporate benefit. Ultimately if your employer or prospective employer threatens to remove the offer of work you need to consider whether you value work that is paid and which may actually exclude you from insurance cover should you be injured at work (or make you personally liable should a colleague or member of the public be injured inadvertently through your actions). It’s not worth it. Insist on staying within the law; a company that cannot keep to employment law is also less likely to hold to professional standards.

**Further guidance**

For a fuller and definitive explanation of self-employed or employed status please refer to the Inland Revenue guide: IR56 - Employed or self-employed? A guide to employment status for tax and National Insurance contributions.

This is available on the web at: [https://www.gov.uk/government/collections/employed-or-self-employed](https://www.gov.uk/government/collections/employed-or-self-employed)

**Employment status**
The Worker [https://www.gov.uk/employment-status/worker](https://www.gov.uk/employment-status/worker)

**Self-employed and contractor**
[https://www.gov.uk/employment-status/selfemployed-contractor](https://www.gov.uk/employment-status/selfemployed-contractor)

**Check your Employment Status**

**Do you need insurance?**
Public liability insurance is often an important cover for businesses, as it can protect you if someone is injured or their property is damaged because of your business - Professional indemnity insurance is a vital consideration for all businesses that give advice or offer professional services to other businesses. It covers you in the event that you give faulty advice that causes financial loss to a client. Talk to Tariq Main at Towergate.

ALSO - Check to see if you are covered by the company – if you are a worker rather than a full freelance Self-employed individual - if you do your own work as well as sub-contracting

Tax and National Insurance when you're self-employed
https://www.moneyadviceservice.org.uk/.../tax-and-national-in...

Self-employment facts and figures by Chiz Harward
https://www.academia.edu/.../Self-employment_facts_and_figures

A guide for Self-employed field archaeologists
BAJR Practical Guide 36 Marc Berger 2015
http://www.bajr.org/.../36_Self_employed_field_archaeologist....

CiF self-employment guidance
http://www.archaeologists.net/practices/selfemployment

Practical Guide to going Freelance
http://www.archaeologists.net/.../WorkingFreelance%20FINAL.pdf

How much to Charge.
Look at an equivalent job with is Employed (ie £18000 digger) Add on 33% and then divide by 200 – 222 days (the possible days you can work in a year) ta da... your day rate. (£108-£120) BEFORE expenses and additional profits... remember the basic rate is just that... the minimum you must charge to equal an employed worker.

Tax Calculator for the Employed and Self Employed
http://www.employedandselfemployed.co.uk/tax-calculator

Inland Revenue Enquiry Centres http://www.inlandrevenue.gov.uk/eng/index.htm

Legal Advice, and Legal Services for Small Businesses
http://www.lawontheweb.co.uk/basics/business.htm#Employing%20Staff

Citizens Advice Bureau – Advice on Holidays and Holiday Pay

Citizens Advice Bureau – Basic Rights at Work
https://www.citizensadvice.org.uk/work/rights-at-work/basic-rights-and-contracts/basic-rights-at-work/

Citizens Advice Bureau – Contracts of Employment
https://www.citizensadvice.org.uk/work/rights-at-work/basic-rights-and-contracts/contracts-of-employment/

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