



Employment Law

Employment Law is notoriously complex and ever-changing. For this reason, the Law Department has produced quite extensive guidance to help keep you on the right track.

Employment Status

It is, first and foremost, important to work out whether your congregational worker is an employee or is self-employed. Determining employment status is important because an individual's employment rights will depend on their status. Generally speaking, those who are self-employed do not come within the ambit of employment law protections. Employees, on the other hand, will have a full range of statutory employment rights. The question of employment status is also important from a treasurer's perspective for obligations in relation to tax, national insurance and reporting to HMRC.



It may, therefore, seem appealing to designate someone as 'self-employed', thus avoiding the obligations that go with being an employer. However, this may well not be appropriate. Employment status is ultimately a matter of mixed fact and law and the label that the parties give to the relationship is not an end of the matter. For example, if you wrongly designate a worker for the purposes of avoiding having to deduct and process tax, you are at risk of enforcement action by HMRC. It is, therefore, an area where you must tread carefully and ensure the correct status is applied.

The tool asks a number of questions about the role and, depending on the answers submitted, should confirm whether the role is employed or self-employed. Occasionally, the tool will state that it has been unable to determine the result. In all cases, it is suggested that a printout of the calculator's result is taken and the matter tabled, discussed and minuted at the next Board/Session meeting. If you feel you may currently have a worker who is incorrectly designated, you may wish to discuss this with the Law Department.

Your congregation as an employer

Whilst being an employer may seem daunting to the office bearers as the charity trustees of the congregation, the Law Department is happy to assist via the provision of style documents and advice when required.



If you do have an employee, it is important that a written contract of employment is put in place. When drafting any new contract, always ensure that you obtain the latest version from the Church of Scotland website. Style contracts for a church officer, cleaner, organist (choirmaster), secretary and youth worker (which can be edited and tailored to your congregation's needs) are available through the website. These styles are updated from time to time particularly when there is a change in the law. An example of recent change is the introduction of automatic enrolment of qualifying workers into a pension scheme. Depending on your PAYE code, your staging date may have passed or is likely to be very soon. Further information on which employees you are required to automatically enrol into a pension scheme is contained in the "Law Circulars" section of the Church website.

Both Unitary and Model Deeds of Constitution provide for the church officer, organist or equivalent post and others such as youth workers, secretaries and cleaners to be employees. Given the nature of the work required, church officers, secretaries and youth workers should only rarely be engaged other than as employees - hence a contract of employment will be appropriate and required. However, if you have a situation where you think the individual concerned should be treated as self-employed, please contact the Law Department for clarification and advice about necessary documentation. Depending on the circumstances, cleaners, or exceptionally, organists may at times be classified as self-employed. Further information regarding employment status can be found in the A to Z of Employment Law for Congregations located on the Law Circulars section of the Church of Scotland website.

Some obligations as an employer

It is a common misconception that casual or part-time employees (particularly those paid in cash) are outside the scope of the Pay As You Earn (PAYE) system. Similarly, where an employee also works elsewhere, it is often thought that tax matters for part-time staff should be dealt with by the 'main employer'. In fact, the obligation to operate PAYE arises out of making any payment by way of earnings and this obligation also applies to part-time and casual staff.

All Church of Scotland treasurers are therefore required to communicate with HMRC on behalf of their congregation in relation to all employees and to use the appropriate taxation code when doing so. Furthermore, if your congregation is paying PAYE, National Insurance contributions will also be due on the earnings paid to employees unless exemptions apply - for example, if the employee is above state pension age or you can claim the employment allowance.





Since 6th April 2013, employers have had to report PAYE information to HMRC in 'real time', sometimes called Real Time Information or RTI. This is through software which should be downloaded onto the Church or the Treasurer's computer. The Law Department has issued guidance on Real Time Information, together with a practical, step by step guide on how to do so. Please refer to the Law Circulars page of the website for further information.

Of course, your obligations as an employer do not end there. Various family friendly provisions now apply in relation to maternity leave, flexible working, adoption leave, parental leave, paternity leave and time off for dependants; and your employees are entitled to statutory minimum periods of paid holiday leave. Absence should be managed appropriately as should any misconduct and capability issues.

Further reading and resources

The Employment Status Indicator tool –

www.gov.uk/guidance/employment-status-indicator

www.gov.uk/employment-allowance