

Employment Status

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Institute of Employment Right's Case Law Updates 2026

Employment Status

Annie Davis
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What are the different categories for individuals providing their services in the job market?

- Employee.
- Worker.
- Self-employed independent contractor.

Why is employment status important?

Rights and benefits of employees:

- Obligations implied into the contract.
- The right not to be unfairly dismissed.
- Acas Code of Practice on Disciplinary and Grievance Procedures.
- TUPE protection.
- *Employers' liability insurance.*

Rights and benefits of workers:

- Working time and minimum wage protection.

Employee status

230 of the Employment Rights Act 1996

“(1)In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2)In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

...

(4)In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5)In this Act “employment” —

(a)in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b)in relation to a worker, means employment under his contract;

and “employed” shall be construed accordingly.”

Worker status

Section 230 of the Employment Rights Act 1996:

“(3)In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a)a contract of employment, or

(b)any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly.”

A test of statutory interpretation

- *Uber and others v Aslam and others* [2021] UKSC 5 & *Autoclenz Ltd v Belcher and others* [2011] IRLR 820 (SC)
- *Ter-Berg v Simply Smile Manor House Ltd and others* [2023] EAT 2

Case law update

Tripartite agency relationships

Lutz v (1) Ryanair DAC; (2) Storm Global Ltd [2025] EWCA Civ 849, [2025] I.C.R. 1448

- Confirmation of the wide and inclusive scope of the concept of worker status.
- Confirmation of the meaning of ‘temporarily’ for the purposes of Regulation 3 of the Agency Workers Regulations 2010.

“in the course of A’s employment”: liability of the employer

AB v Grafters Group Ltd [2025] EAT 126

- The tribunal needs to consider the nexus between the harassment and work when considering whether the act is in the course of employment.
- The provision of a lift to work can be an extension of work and the workplace.
- An employer may be liable for harassment regardless of the motivations of the harasser: *“The fact that a person’s motivation is having an opportunity to harass does not mean that the person is not acting in the course of employment”*.

Taxi drivers can be self-employed

Johnson v GT Gettaxi [2024] EAT 162

- A helpful review of the legal principles around determination of employment status.
- Provides a useful reminder that when analysing employment/worker status, although it is essential to look to the wording of s.230 of the Employment Rights Act 1996, the contract must not be looked at in isolation but in the factual matrix in which the contract is cast.

Who is the contracting party and how can the ET use documents?

Partnership of East London Co-operatives Ltd v Maclean [2025] EAT 142

- The tribunal was entitled to consider what light the terms of a document (the Members Agreement) would cast on two issues separately. The issues were who the respondent had contracted with (the claimant or her company) and whether the claimant was an employee, worker or neither.

An ET finding that a claimant was not an employee does not automatically prohibit them from being a worker

Ter-Berg v Malde and Hancock [2025] EAT 23

- A previous finding by the tribunal that the essential elements of the employee status test were not met, including as to ‘control’ and the intentions of the parties, was not an automatic bar on finding that the claimant was a worker.

Thank you

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