



The rise in innovative retail services: tips on managing employment status risk

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In the face of the changing marketplace and increasing cost pressures, retailers are creating innovative methods of selling and delivering to consumers which continue the trend of moving away from purely in-store shopping and focussing on the customer 'experience'. The courier service being offered by some luxury retailers – whereby specialist couriers deliver selected items to customers to try on at home and provide a tailoring service – is just one example.

By its nature, moving away from a solely in-store traditional business model tends to result in more flexible working arrangements, a more transient workforce and wider use of self-employed status. Unsurprisingly, this is a common trend across many sectors and employment status remains one of the hottest topics in employment law. The UK government has also published proposals to reform this area. Retailers should, therefore, be alive to the risks of using self-employed individuals when implementing new business models.

There are three types of employment status: employee, worker and self-employed, with self-employed individuals having the fewest statutory employment rights. An individual's employment status depends on the facts of each particular workplace arrangement.

Recently, several legal challenges have been mounted in the UK, particularly arising from issues in the gig economy, where individuals who had been engaged as self-employed have claimed they were in fact “workers” and as such were entitled to the national minimum wage, holiday pay and pension contributions. To date, the courts have predominantly found in favor of the individuals.

This area continues to evolve and the true status will always depend on the individual facts but based on current law, here are some of our key tips for retailers on managing the risk of challenges to employment status:

- Assess the business requirements and the relationship envisaged with the individuals first to determine if engaging them as self-employed is the right choice.
- Avoid a requirement for personal service and give the individual an unqualified right to provide a substitute.
- Remember that an individual's employment status will not be determined by the contract alone; how the relationship operates in practice will be crucial.
- Be aware that a classification of self-employed for tax purposes does not automatically mean that the same classification will apply for employment rights purposes.

- Consider using worker or employee status if more control is required over the individuals and their work.

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