**EMPLOYMENT STATUS**

It is not always easy to identify the employment status of an individual but this is important as it affects the employment rights that individual has.

There are three main types of employment status:

* Employee
* Worker
* Self- employed

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| **EMPLOYMENT STATUS** | **DESCRIPTION** | **EMPLOYMENT RIGHTS (OVERVIEW)** |
| **Employee** | To be classified as an **employee** there are some essential elements that must be satisfied:* The individual has to have a contract with the employer (sets out key terms such as pay, annual leave and working hours)
* The individual has to carry out the work personally
* There has to be “mutuality of obligation” between the two parties (the employer has to offer the employee work and the employee must do it)
* The employer has to have control over the work the employee does

An employee can also be described as a worker, but the expression “worker” is more often associated with “casual/infrequent” contracting arrangements. | Employees are entitled to a wide range of employment rights, including all those to which a worker is entitled. Examples of employee rights include:* written statement of employment – setting out key terms and conditions
* itemised pay slip
* the National Minimum Wage
* holiday pay, maternity and paternity pay etc
* the right to request flexible working hours
* the right not to be discriminated against.
* Can claim unfair dismissal, right to notice, right to redundancy payments
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| **Permanent Contract/Open-ended Contract Employees** | A **permanent contract** is a contract without an ending date. The employee will receive a contract setting out the university’s terms and conditions of employment as they relate to the role the employee is undertaking. | As stated for employee above |
| **Fixed-Term Employees** | A **fixed term contract** terminates on a specified date or at the end of a particular project or a specific task, fixed term employees could be employed for seasonal work, casual employees taken on to cover a busy period or someone to cover for maternity leave.Contracts will normally end automatically when they reach the agreed end date or can be terminated earlier as long as the contract has provision to do this.The university has an agreement with the recognised trade unions regarding the use of fixed-term contracts which sets out that fixed-term contracts will only be used in transparent, necessary and objective reasons which include:* cover for a member of staff who is absent for a limited period (for example on maternity leave, sickness absence, study leave, secondment etc);
* where the appointment requires specialist skills for a limited period or is to accomplish a particular task or project for a limited period;
* externally-funded, time-limited research projects where the prospect of continued funding is unlikely;
* appointment to a clearly defined training or career development position (eg graduate trainees, apprentices, Knowledge Transfer Partnerships);
* secondment;
* temporary re-engagement following early retirement;
* appointments to cope with unexpected or unpredictable period of demand over a time-limited period.

With regard to “externally-funded, time-limited research projects where the prospect of continued funding is unlikely”: a fixed term appointment will usually only apply to the employee’s first appointment with the University, where there is no evidence of continued funding. In such circumstances, the University's commitments under the research concordat will apply.In circumstances where funding bodies do not permit the holders of research fellowships to have an open-ended position or where the funding cannot be used for open-ended appointments, individuals may need to be offered a fixed term contract to fulfil the conditions of the funding body. | * Employers must not treat fixed term workers less favourably than permanent employees doing the same or a similar job (pay/conditions/benefits) unless this can be objectively justified.
* Fixed term workers who work continually for the same employer for two years or more may have the same redundancy rights as a permanent employee.
* Employees on a fixed term contract for four or more years may automatically become a permanent employee.
* Employees on fixed term contracts should receive information regarding any permanent vacancies within the organisation
* Have protection against unfavourable treatment as a fixed term employee
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| **Worker (including casual or irregular working)** | A **worker** is defined in regulation 2 (1) of the Working Time Regulations 1998 as someone who works under a contract of employment or “ any other contract, whether express or implied…. whereby the individual undertakes to do or perform personally any work or services for another party to that contract”, provided they are not a client or customer of the individual’s profession or business.A worker is often associated with casual or irregular working arrangements. An individual is likely to be a casual or irregular worker if most of these apply:* they occasionally do work for a specific organization
* the organization 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 organization uses terms like ‘casual’, ‘freelance’, ‘zero hours’, ‘seasonal’, ‘as required’ or something similar
* they had to agree with the organization’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 organization deducts tax and National Insurance contributions from their wages
 | Workers are entitled to some employment rights including:* the National Minimum Wage
* holiday pay
* protection against unlawful discrimination
* the right not to be treated less favourably if they work part-time.

Workers are not entitled to:* minimum notice periods if their employment will be ending, for example if an employer is dismissing them
* protection from unfair dismissal
* the right to request flexible working
* time off for emergencies
* statutory redundancy pay
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| **Self-employed (Contract For Services)** | A **self-employed individual** provides the employer with his or her services, but remains independent. The contract between the individual and the University 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 (see Personal Service Company below). If a ‘contractor’ does work similar to that of an employee, or in a similar manner, then HMRC considers that they should be engaged as employees and the University must therefore deduct PAYE tax and NI. Managers wanting to employ ‘contractors’ **must** therefore identify/seek approval for the necessary funding and identify the employment [status](http://www.exeter.ac.uk/media/universityofexeter/humanresources/documents/selfemployment/PD27_Employment_Status_Questionnaire_v2.doc) of their work or assignment (and set up a formal contract under the appropriate heading/contract as per defined arrangements):* Fixed-term employee (via HR)
* eClaims/Casual worker (via HR)
* Contract for services (currently via Procurement with exception of UEBS)

Note: To meet the requirements of employment law and tax law and to safeguard the university’s position as an employer, the university expects most individuals engaged to work by the university to be employed on a contract of employment (approved via the eSR1 process). In addition, the [claims payroll](http://www.exeter.ac.uk/staff/employment/tempworkers/casual/) should only be used for engagements which are ad hoc or of very short duration. There may however, be However in some circumstances where it may be necessary to issue a ‘contract for services’ and engage someone on a self-employed basis.  | Self-employed workers are not entitled to statutory employment rights. However, a self-employed person:* still has protection for their health and safety on a client's premises
* in some cases will be protected against discrimination
* will have their rights and responsibilities set out in the terms of the contract with their client
* in general will not have right to holiday pay
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| **Freelance** | Working on a contract basis for a variety of companies, as opposed to working as an employee for a single company. Freelancers are often considered to be self-employed, and have the freedom to pick and choose their projects and companies they would like to be associated with. Examples include journalists, performers. | As Self-Employed/Contract for Services (see above) |
| **Personal Service Company (PSC)** | * A **PSC** can be a Limited Company or Partnership.
* One individual will be the majority shareholder in the Company (either directly or when they include their spouse/partner/dependent(s)) and that individual will be the majority beneficiary from any services provided by the Company.
* The individual provides the services through the Company and is highly likely to be the only person working in that Company. The services the University requires from the Company cannot be provided by others working at the Company.
* The work the individual is doing will be similar to the work of one of the University’s employees and if the individual is unavailable to work the Company will not be able to provide a substitute.
* Cannot be paid by invoice when the work when the work they are doing is similar to that of an employee and will need to be engaged and paid as a worker or employee, with PAYE/NI deducted and payments made either through the university’s payroll or e-claims.

**Common areas where such PSCs are used*** Project consultants that work on a specific project for a specific period as if they were employees. When they are finished, they leave.
* Interim Management/Contractors/Temporary staff.
* Freelance lecturers/teachers.
* Professionals that provide services we need as part of our curriculum but have another job (such as GPs/Doctors).

Process for using Personal Service CompaniesThe process to be followed for engaging someone through a Personal Service Company is the same as set out under ‘Self-employed’ – Contract for Service set out above. This must be followed in all cases. | Are not entitled to statutory employment rights. However, they will still have * protection for their health and safety on a client's premises
* some cases will be protected against discrimination
* will have their rights and responsibilities set out in the terms of the contract with their client
* in general will not have right to holiday pay
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| **OTHER WORKING ARRANGMENTS** |  |  |
| **Agency Workers** | An [**agency worker**](http://www.acas.org.uk/index.aspx?articleid=5885)is supplied by a temporary work agency to a client/hirer to carry out work for the client/hirer. The work is normally for a temporary period. Agency workers are classed as "workers" rather than as employees. | [The Agency Workers Regulations](http://www.acas.org.uk/index.aspx?articleid=1873) give agency workers the right to the same basic working and employment conditions they would receive if directly engaged by the client to do the same job.All workers, including agency workers, are entitled to certain rights which include:* paid annual leave
* rest breaks and limits on working time
* the National Minimum Wage
* no unlawful deductions from wages
* discrimination rights under the Equality Act 2010
* health and safety at work.

The Agency workers regulations also give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of **12 weeks** in a particular job, specifically:* pay - including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay
* working time rights - for example, including any annual leave above what is required by law.

To establish the rights in these regulations, the agency worker needs to be able to identify a comparator.Agency Workers (regardless of their employment status) will also be entitled to paid time off to attend **ante-natal** appointments during their working hours.If an agency worker is working on more than one assignment the agency worker will have two or more assignments that need to accrue separately. In other words if an agency worker has assignment A and assignment B, they would need to work for 12 weeks on assignment A before their rights apply to assignment A, and 12 weeks on assignment B before their rights apply to assignment B.The Regulations require that a new assignment would need to comprise 'substantively different work or duties' for the qualifying period to start again. |
| **Apprentices** | [**Apprenticeships**](http://www.acas.org.uk/index.aspx?articleid=3816) are work-based training programmes which lead to nationally recognised qualifications. Apprentices normally attend  local colleges or specialist training providers on a day release basis as part of their training. Depending on the level, apprenticeships can take between one to four years to complete:* Intermediate Level Apprenticeships - apprentices work towards work-based learning qualifications such as a Level 2 Competence Qualification, Functional Skills and, in most cases, a relevant knowledge-based qualification.
* Advanced Level Apprenticeships - apprentices work towards work-based learning such as a Level 3 Competence Qualification, Functional Skills and, in most cases, a relevant knowledge-based qualification.
* Higher Apprenticeships - apprentices undertake a framework at Level 4 and above which will include a competence based qualification, Functional Skills and in some cases a broader vocationally related qualification which could be a Foundation degree.

School leavers can still leave school at 16 in England and Wales but must continue their education until they are 18 which could include becoming an [**apprentice**](http://www.acas.org.uk/index.aspx?articleid=5886). School leavers in Scotland can still leave school without going into further training. | Apprentices under 19, or 19 years and over in the first year of their apprenticeship, are entitled to be paid the [apprentice national minimum wage](http://www.acas.org.uk/index.aspx?articleid=1902). However, employers can pay a higher rate if they choose to. Once an apprentice reaches 19 years and has completed the first year of the apprenticeship the employer must pay the full national minimum wage rate.All other apprentices are entitled to the national minimum wage based on their age.Other than pay, must be offered same conditions as employees at same grade or doing similar roles.  |
| **Interns**  | [**Interns**](http://www.acas.org.uk/index.aspx?articleid=5892) are graduates or students who spend a fixed amount of time working to gain skills and experience in a particular industry or sector. [**Internships**](http://www.acas.org.uk/index.aspx?articleid=3603) should not be confused with work experience which involves a person spending a limited period with an employer to learn about working life and the working environment.University of Exeter Intern arrangements include:**Student Campus Partnerships**Internships will typically be up to 15 hours per week during term time, and 36.5 hours per week during the vacation periods.**Graduate Business Partnerships**Most GBPs are approximately 37 hrs per week, Mon-Fri 9-5pm, but could be part-time.Most internships are for 12 months but some can last for 23 months. The minimum is 2 months, but most are not less than 6 months. **Other employers:**The university also has Graduate Business Partnership and Student Business Partnership Arrangements with other employers. | An interns employment rights will depend on their employment status. If they are classed as a worker then they're normally entitled to the national minimum wage. However, if the internship is part of a UK-based further or higher education course (a sandwich course) lasting less than a year then interns are not normally entitled to the National Minimum Wage.However, they will still have protection for their health and safety on a client's premises |
| **Work Experience** | **Work experience** generally is someone who spends a limited time with an employer to learn directly about work and the working environment, although some tasks may be performed it is more an opportunity to watch and learn, and often aimed at students of compulsory school age. | Are not entitled to statutory employment rights. They will have protection for their health and safety on a client's premises |
| **Volunteers** | [**Volunteers**](http://www.acas.org.uk/index.aspx?articleid=3603) carry out unpaid work for organisations such as charities, voluntary organisations or fundraising bodies. Volunteers should have a volunteering agreement/letter and a role description rather than a contract of employment and a job description. They should receive training and development appropriate to their role. | Are not entitled to statutory employment rights. They will have protection for their health and safety on a client's premises |
| **Umbrella Company** | An [**umbrella company**](http://www.acas.org.uk/index.aspx?articleid=5891) is a company that will act as an employer to agency contractors who work under a fixed term contract assignment. The umbrella company will normally sign a business-to-business contract with the recruitment agency, and the agency will sign a contract with the client. The agency will invoice the client for completed work, the client pays the agency, and the agency then pays the umbrella company. This money becomes the Umbrella company's income. The umbrella company deducts the necessary tax and NI contributions, including employers NI, and any other deduction necessary, which means the payment will be made through PAYE. | As agency workers (see above) |