

# The eclectic mix of employment in business

~ Lisa Davis & Jonathan Coe from NorthgateArinso's Best Practice Group explain the employment status of students, trainees and apprentices ~

In preparation for the upturn, companies in the UK will be looking to take on more students, trainees and apprentices, as a result of redundancies and cut backs.

Hiring trainees and younger workers can be a positive experience on both sides – it's cost effective for employers who are often rewarded with a bright, keen individual, and for new recruits, apprenticeship programmes and internal training schemes provide a source to gain valuable new skills.

Indeed, school leavers may find themselves more in demand than ever before and companies may be more prepared to enter into Youth Training Schemes than previously. Employment status

However, employers need to be aware that how a person is treated under employment rights will differ depending upon the new recruit's employment status. There are several factors to bear in mind, which can easily cause confusion among employers and payrollers faced with student workers. It's all too easy to make the wrong assumption when entering these employees on the payroll, which can have a significant impact on salary and tax for those involved.

There are basically three categories: workers, employees or self-employed.

The category they are placed in will determine what employment rights they are due, as well as the training and payment an individual may be entitled to. Here we will consider that of a 'worker' and an employee.

## Worker

Workers have to perform work or services personally, and as such enjoy most of the basic employment rights such as national minimum wage (NMW), Statutory Maternity Pay (SMP), Statutory Sick Pay (SSP) and minimum holidays.

## Employee

An employee is defined as 'an individual who has entered into or works under a contract of employment'. Employees are also workers but are additionally entitled to a statement of employment, minimum notice periods, statutory redundancy pay and flexible working etcetera. They are also paid a wage or salary from which the employer deducts pay as Pay As You Earn (PAYE) and National Insurance contributions (NIC).

## Students

A student who is in receipt of a grant or loan is not deemed to be a worker, providing that he or she is not paid in return for work done on the course. Students receiving bursaries (i.e. nursing students) are not deemed to be in paid work even though they may undertake work on wards. Normally students do not pay PAYE if:

- They are a full time student and only work during the college or university holiday periods, and return to education after the break
  - Their total taxable income for the year is less than the personal allowance, currently £6,475 per annum
- All such students must ask for and complete a P38(S) form if income tax is not to be deducted from their earnings for that tax year. However, NICs could still be deducted if earnings exceed £110 per week.

If a student takes on paid employment at any other time, they are then subject to normal PAYE, as well as NICs if their accumulated earnings exceed £6,475 for 2010/2011. The P38(S) process does not then apply.

Employment law for a student worker is no different to that of a normal worker, including leave, minimum wage, etc.

As of October 1 2009 the NMW rates are:

- 16-17 years of age £3.57 per hour
- 18-21 years of age £4.83 per hour
- 21 and over £5.80

Generally students aren't protected against unfair dismissal from part-time jobs, until they have been in the same job for at least a year. However certain 'unfair' reasons for dismissal are covered such as in the case of pregnancy, sexual orientation, whistle-blowing, refusing to perform a job which was dangerous with a risk of physical harm, and joining a trade union.

## Youth training

There are special rules to follow if an employee is receiving YT (youth training allowance), differing depending upon whether they are taken on as an employee or a trainee.

All financial income must be included in gross pay when calculating PAYE & NICs, which includes the YT allowance as well as any top up payments made by the employer.

To do this:

- Add together the YT allowance and top up
- Calculate any PAYE and NICs due on the total
- Calculate the net pay
- Deduct the amount of the YT allowance from the net pay
- What is left is what is payable of the top up

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If taken on as a trainee (not an employee), receiving just the allowance from the YT scheme direct, then PAYE or NICs are not calculable, and the allowance doesn't count as gross pay for these purposes. However, should a 'top up' be paid then advice should be sought from HMRC.

## New Deal (ND)

New Deal is the name for a range of government programmes designed to help the unemployed return to work.

An employee hired under the New Deal arrangements, will result in payments made to the participant by the employer falling subject to normal PAYE and NI regulations. If you take someone on under a Full Time Education Training placement an ETF (Environment Task Force) or VS (New Deal Voluntary Sector), then the participant will receive a training allowance direct from the Job Centre and the employer does not have to make any payment.

People in the New Deal 50+ receive employment credits and no PAYE or NICs are due.

## Graduates placement and internships

The terms 'placement' and 'internship' usually mean the same thing, but some are paid and some are not. If the job is performed as a 'worker', then the graduate must be paid at least the national minimum wage. The exception to this is if the placement is part of a further or higher education course and lasts up to one year. If they are taken on as a volunteer, then it is unlikely that any payment will be made but expenses could be payable, such as travel costs.

Contracts are normally issued and will include the working hours and details of any payment. Where the graduate placement is for less than 16 hours then Job Seekers Allowance is still payable.

## Apprentices

There are now three levels of apprenticeship, originally designed for the 16 to 25 age group:

- Apprenticeship
- Advanced Apprenticeship
- Higher Apprenticeship

An apprentice is, in most cases, treated as an employee. In general an apprenticeship takes one to four years to complete, and participants must be at least 16 or over to be eligible.

Apprenticeships are not subject to the NMW, where they are under 19 years of age or aged 19 and over within the first year of apprenticeship. The minimum an apprentice must receive is £95 per week but employers can pay more if they wish. Research has shown that apprentices take home on average about £170 per week. Minimum rates for agricultural workers will be different.

However, taking on an apprentice brings its responsibilities. If the company can no longer provide training for an apprentice, then that would constitute a breach of contract. An apprentice could be entitled to remuneration if the employer has failed to train him or her due to the contract being broken – and such remuneration could exceed that of a non-apprentice. An apprentice is entitled to at least 20 days paid holiday a year plus bank holidays.

There are laws in place to protect how many hours an employee can work and this also applies to apprenticeships. The limit for an average working week is 48 hours, or 40 hours if under 18. A person can work more than this in one week but over a 17 week period it must average out to less than this.

## More information

It's vital that both Payroll & HR professionals understand the relatively complex rules around students, trainees and apprentices. While most large companies have the relevant experience and knowledge in house, smaller companies and those with no HR department will need to be extra careful.

Those who are still unsure of the details should look to the HMRC website for clarification (<http://www.hmrc.gov.uk/manuals/echmanual/ECH11007.htm>).

Alternatively, if Jobcentre Plus was involved with the recruitment process, then advisors there should also be able to help.

These two sources should contain everything; payrollers and HR people need for advice, as they need to be 100 per cent sure they are neither underpaying nor over paying students, trainees and apprentices, and that both employer and employee are getting the best possible deal.

## Payroll processes

Once payroll is notified that a new starter from a government approved course is to be added, the business should:

- Establish that correct remuneration (rate of pay, Tax, NICs) is being paid in liaison with HR
- Advise putting them into a unique pay group and cost centre (agreed with finance dept)
- Set up a unique pay element code
- Create new or incorporate into payroll procedures and reports as necessary

## HR Processes

The HR department will need to consider and be mindful of:

- Employment rights according to employment status age and type of training course
- Right to work checks
- May need to conduct CRB checks where the trainee is working with children or within other sensitive areas
- Complete any questionnaires or forms in accordance with the course requirements
- Liaise with government training bodies

For an initial discussion about your requirements call us on 0800 035 0545.  
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