

Weighing it up

An update on the employment status of hygienists, with some timely advice from tax expert Bob Cummings



The employment status of hygienists has been the subject of controversy for some time. It's a fraught issue because HM Revenue and Customs (HMRC) has occasionally challenged practices claiming to have self-employed hygienists – and won.

This can be damaging, especially for the practice owner, since HMRC can claim backdated tax and Class 1 National Insurance Contributions (see Panel 1), amounting to thousands of pounds. Not so good for the hygienist either, as it will inevitably lead to bad feeling.

While associate dentists are usually self-employed and have a reference in the HM Revenue and Customs Employment Status Manual to support this, hygienists are usually employed. My gut reaction is that this is right, although there are plenty of exceptions to the rule. The important thing is that you have the employment status appropriate to you and your circumstances.

With the advent of direct access for hygienists, my prediction is that many more of you will claim to be self-employed. So, what are the key differences

between being employed and self-employed? Both have their pros and cons. It's important if you are self-employed to make sure it's worth your while since you won't get paid holidays and will not be entitled to sick pay. You will have to pay your own National Insurance (Class 2 – see Panel 1).

Critically, as a self-employed person, you should be capable of making a loss as well as a profit. This means that if the patient does not turn up, you don't get paid. Or, if they fail to pay, you have to chase the money. There is a set of tests

for employment and self-employment, known in the business as badges of trade. If you are in any doubt as to your position and whether you can argue you are self-employed, check out Panel 2.

In essence, you are weighing up the potential fluctuations of being an independent service provider against regular money in the bank. If the hygienist only works at one practice, employee status is probably appropriate. On the other hand, for hygienists who work at several practices and who want to retain their independence, self-employment

Panel 1 National Insurance Contributions overview

Class 1 Deducted from the employee salary and paid to HM Revenue & Customs by an employer. The employer also pays Class 1 Contributions on the employee's earnings.

Class 2 Paid by the self-employed. Currently £2.50 per week.

Class 3 This is a voluntary contribution for those who want to top up their state pension

Class 4 A Contribution paid by the self-employed based on the amount of profits



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does offer some benefits. Principals, particularly those of larger practices or groups, like it too because they will be paying less Employer's National Insurance and will be free from paying for holidays and sick leave.

Case studies

I have recently won a case on behalf of a practice with a self-employed hygienist. The inspector from HMRC interviewed the hygienist but she knew what he would be looking for and her answers truthfully reflected someone operating her own business.

Another case I came across involved a practice which took on a hygienist and simply told her that she would be self-employed. All she would have to do is submit regular invoices for the same amount monthly. I told the hygienist that she needed to set the parameters of the working arrangement if she wanted to claim self-employment and the exact same amount in the bank every month would discredit her claim. The hygienist was grateful because if HMRC had challenged the case, they

would probably have won.

It is important for a hygienist to have the right contract with the practice from a legal perspective, as well as a tax perspective. In other words, you need to understand the implications of what you are doing. You should also make sure that the contract reflects your working arrangements. You would also expect to work at a higher hourly rate than your employed colleagues because running your own business does involve additional work – and expense!

In summary

- Have a written contract
- If you claim to be self-employed, make sure you and the practice owner understand what this involves
- When in doubt, consult a specialist advisor! **DH&T**

Panel 2 Badges of trade – the self-employment test

In the list below; the more questions you can answer 'Yes' to, the more likely you are to be considered self-employed.

1. Do you set your own hours and decide what holidays to take, and when?
 2. Do you risk your money in the business?
 3. Are you responsible for meeting any loss as well as taking any profit from the business?
 4. Do you have to correct unsatisfactory work in your own time and at your own expense?
 5. Do you have a final say in how you work in the business?
 6. Can you hire someone to do the work or engage helpers at your own expense?
 7. Do you provide the main items of equipment you need to do the job
- Conversely, answering 'yes' to the following questions will probably mean you are an employee:
- A. Do you have to do the work yourself?
 - B. Can someone tell you at any time what to do, where to carry out the work or when and how to do it?
 - C. Are you paid a salary?
 - D. Do you work fixed hours or a set number of hours every week or month?
 - E. Does the person you work for decide on the premises you work from?