

## Your Legal Questions



Stephen Soper  
Partner & Solicitor

**Q** I own a business. I have a number of workers with agreements which state they are self employed and responsible for their own tax. I understand there is a danger they could still be treated as employees. Is that right?

**A** Legal arguments about the distinction between a genuinely self employed worker and an employee are not new. However, the significance of the difference has become increasingly important as the rights of employees have increased over the years so they now include unfair dismissal and redundancy protection, paid holiday and the national minimum wage.

Employers have sought to protect themselves by asking workers to sign agreements confirming their self employed status. However, a recent decision of the Supreme Court has put the cat among the pigeons by finding that employers cannot simply rely on a written contract to determine employment status if it does not reflect the reality of the relationship. The Court will investigate the true nature of the agreement between the parties and if that looks in all essential respects like an employer/employee relationship, the worker will be an employee and not self employed. Regard will be taken of the relative bargaining positions of the parties when considering the weight to be given to any agreement. Clearly, there is a considerable difference between an agreement freely negotiated and one where the worker has no realistic choice other than to sign a pro forma document.

The implications for employers are very serious because they could face substantial claims for back holiday pay, redundancy etc. Employees who have signed agreements stating they are self employed or must deal with their own tax may have more rights than expected. I suggest you seek advice from a Solicitor to consider carefully your existing documentation and working arrangements to see if any action is necessary and whether any contingency funds should be set aside to cover prospective holiday pay and redundancy claims.