



17 May 2017

Dear Sir or Madam,

Re: Submission to Modern Employment Review

Please find enclosed our submission to the Modern Employment Review, with evidence from our specialist employment advice project at Citizens Advice Newham.

Yours sincerely,



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Many of the employment issues people bring to our Newham office, are related to low pay and insecurity. Most of our service users are in low paid and insecure work in service sector and construction industries including builders, security officers, cleaners, HGV drivers, kitchen porters.

Many of our service users are paid minimum wage, and face difficulties coping with high rents in Newham. We work to maximise incomes, carrying out benefit checks, and assist with housing benefit applications. Many low paid workers using the project are not aware of their entitlement to working tax credits and other in-work benefits and it can be confusing to understand how in-work benefits and tax credits interact with fluctuating incomes (national uptake of Working Tax Credit was as low as 65% in latest HMRC figures, 2016).

Our employment caseworker highlights below some of the key employment issues and evidence we have seen as a result of our work on this project, together with some suggestions and ideas for improvement. These are based on observations from our local project and not intended to reflect or represent wider national trends.

Self-employed status:

We find the issue with self-employment is with how the tests for employment status work on both in a legal and practical sense. That is, many employees and employers are unaware they don't decide what an individual's employment status is, that it's a factual assessment of what the nature of their relationship. Namely, whether it shows any of the following characteristics:

- **Mutuality of Obligation:** Is there in reality (regardless of whether it's in writing) a duty to provide the individual with work, and for that person to perform it for remuneration.
- **Control:** Is the individual sufficiently integrated into the employer's organisation, does the organisation, for example provide the individual shifts.
- **Personal Performance:** Does the individual in question have to perform his or her work for their potential employer's organisation.

In combination with this, there appears a general lack of awareness of the fact that contracts do not need to be in writing, that the above is a substantive test of what exists in reality not on paper. In other words, regardless of whether there is a written contract to the contrary, if in reality any of these tests are met it's unlikely the individual in question is unlikely self-employed.

Someone who is genuinely self-employed has no restrictions on how they are remunerated and if they fail in any of their duties, they are sued for breach of contract not under rules surrounding employment. In my experience there appears to be two main reasons for this lack of understanding. Firstly the substantive nature of this test is quite hard to get your head around if you don't already have a background in law.

Secondly, the above test is confused with an individual's tax status, which may be relevant to the above tests, but is unlikely to be. This is because regardless of whether someone is a

We believe employment tribunal fees should be reduced, as they are a barrier to access to justice for our clients.

Grievance and disciplinary procedures & Better dispute resolution skills

We find people are often not aware of good dispute resolution, both employers and workers. Many people who contact us for advice do not feel they are capable of resolving their own disputes, many seek formal legal representation as early as possible, which often only serves to exacerbate the situation as employers are more likely become defensive.

We also see challenges for our clients in finding specified work colleague or trade union representative to accompany them a meeting to grievance or disciplinary hearing. Could this be broadened to permit other appropriate parties to attend?

We hope this information is helpful – please do contact Catherine Dempsey at Citizens Advice Newham for further information.