

When companies think about recruiting extra personnel they are often faced with a decision as to whether to take on a new employee or to bring in contractors or consultants. In some industries, most particularly IT and journalism, there is a well-established pattern of individuals working as freelance contractors for many different clients. In other industries the use of freelancers (also known as independent contractors or consultants) is viewed negatively for a variety of different reasons.

This update examines some of the main differences between an employee and an independent contractor (or freelancer). For anyone considering taking legal advice in the area it is worth knowing that a “contract of service” is a legal term used to describe an employment relationship while a “contract for services” describes the relationship between an independent contractor (or freelancer or consultant) and his/her client.

So what are the main differences between the status of an employee and a contractor? There are seven key ways in which the relationship between employer and independent contractors differs from the relationship between an employer and employee under Irish law. These are relevant to both employers and individuals.

	Employee	Contractor
Labour law	Employees benefit from a range of protective Irish laws including the Unfair Dismissals Acts 1977 to 2007	Most labour laws do not protect individuals who are engaged as contractors but they have some alternatives such as the Commercial Agents Regulations 1994
Personal	An employment contract is personal to the individual and cannot be transferred	A contractor will usually be entitled to sub-contract the performance of his/her services
Tax	The employer is primarily accountable for tax and liable to the Revenue Commissioners if not paid	Contractors are responsible for their own taxes and are self-assessed with greater levels of permitted tax deductions
Social Insurance	If unable to work, an employee may be entitled to social welfare	Contractors need to insure against the risk of becoming unable to earn an income
Intellectual Property	Rights developed by employees in the course of their employment generally vest directly in the employer	Agreements between contractors and their employers need to contain specific provisions addressing IP issues
Trade Unions	Employees are entitled to engage in collective bargaining under Irish law	Independent contractors (such as freelance actors and journalists) are prohibited under competition law from engaging in collective bargaining
Data Protection	Data protection laws do not closely regulate the relationship between employers and their employees	Employers need to impose obligations on contractors as regards data protection (some are required by law while others are just commercially prudent)

These differences are important because the Irish courts have consistently decided that the question of whether a particular relationship will be a *contract of service* or *contract for services* is dependent on the facts of the situation. How the parties choose to describe their relationship is persuasive but no more.

That means that companies need to be clear about how they want to bring in new staff, they must communicate the issues clearly to their people and they have to make sure they have the right agreements in place to act as a firm foundation for their plans.

It is quite common for companies to find out that a contractor has been involved in an important development project and as a result not all intellectual property rights are owned by the business. In such circumstances swift action may be needed to rescue the situation and it can be expensive to do so. Other common difficulties are in relation to tax and social insurance where incorrectly treating personnel as an independent contractor rather than an employee can leave a company with a big debt owing to the Irish Revenue Commissioners and little practical recourse to the personnel concerned.

For further information, please contact [Peppe Santoro](#) at [Venture Legal Services](#) directly.

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