

Proforma on assessment of working status

Any individuals who are uncertain of their working status may fill in this proforma for learning more about the difference between features of employees and self-employed persons/contractors.

PLEASE NOTE: The assessment result is based on the information provided by you and may serve as a general reference only. The final interpretation will rest with the court in case of a dispute.

Part A – Questions for Assessment

Choose the sentence in each question that best describes your working condition:

1) Control over work procedures, working time and method

- (A) You were required to follow the instructions of the other party of contract to perform the assigned work at a specific work location, date and time.
- (B) You could arrange the work priority, work location, date and time. You could choose whether to perform the work.
- (C) Uncertain

2) Ownership and provision of work equipment, tools and materials

- (A) You were not required to prepare most of the work equipment, tools and materials because they were supplied by the other party of contract, or the amount of purchase could be reimbursed by the other party of contract.
- (B) You were required to supply most of the work equipment, tools and materials (regardless of whether they were paid at your own expense or rented from others).
- (C) Uncertain

3) Responsibilities in business, investment and management

- (A) You were not required to bear any cost in running business, making investment or undertaking management. Expenses incurred in the course of work could be reimbursed by the other party of contract.
- (B) You carried on business on your own account (e.g. liaising with clients directly for businesses) and bore responsibilities for investment and management (e.g. cost evaluation or resources investment).
- (C) Uncertain

4) Identity in the commercial organisation

- (A) You were regarded as part of the organisation of the other party of contract (e.g. you were offered a staff card, a post title or a uniform, etc.).
- (B) You were acting on behalf of yourself or running your business as a sole proprietor/ joint venture during work and you were not regarded as part of the organisation of the other party of contract.
- (C) Uncertain

Choose the sentence in each question that best describes your working condition:

5) Right to hire substitutes and helpers

- (A) You were not allowed to contract out your work or hire helpers to assist in the work.
- (B) You were free to contract out your work or hire helpers to assist in the work.
- (C) Uncertain

6) Financial risk over business

- (A) You bore no financial risks and received a fixed rate remuneration, overtime income and/or commissions calculated based on an established mechanism from the other party of contract.
- (B) You had to undertake financial risk in the business (i.e. making profit from sound business and bearing loss during poor business).
- (C) Uncertain

7) Responsibilities in taking out insurance

- (A) Employees' compensation insurance was taken out by the other party of contract and you were being covered by the insurance as an employee.
- (B) You were responsible for taking out an accident insurance in respect of accidents at work.
- (C) Uncertain

8) Responsibilities in tax

- (A) The other party of contract filed you as an employee on the tax return.
- (B) You filed tax return on your own as a self-employed person.
- (C) Uncertain

9) MPF arrangements

- (A) MPF arrangements and monthly contributions were made by the other party of contract.
- (B) You arranged your own MPF scheme account as a self-employed person and made contributions accordingly.
- (C) Uncertain

10) Traditional structure and practices of the trade or profession concerned

- (A) According to the traditional structure of the trade or profession concerned and the industry norms, you were commonly classified as an employee based on the work performed by you.
- (B) According to the traditional structure of the trade or profession concerned and the industry norms, you were commonly classified as a self-employed person, contractor or independent contractor based on the work performed by you.
- (C) Uncertain

Part B– Reference

The common features of “employees” with reference to the past court cases are listed below for reference.

Control over work procedures, working time and method	<ul style="list-style-type: none">• Keep attendance record (e.g. clock in/ out)• Inform or submit application to the other party of contract for taking leave• Obtain work instruction/discipline standards from the other party of contract• Subject to penalties such as receiving a lower performance rating, job orders being reduced and priority in selecting job orders being lowered etc., in case of violation of work instructions/discipline standards set by the other party of contract• Job assignments/ workload/ work procedures (including time and location) are determined by the other party of contract• Working situations, such as whereabouts and work progress, is closely monitored by the other party of contract• Wear a uniform provided by the other party of contract while at work• Not allowed to take up jobs for others or permission to do so is required to be sought from the other party of contract in advance; or you have virtually no capacity to take up other jobs due to full engagement in the assigned work
Ownership and provision of work equipment, tools and materials	<ul style="list-style-type: none">• The other party of contract supplies most of the work equipment, tools and materials
Investment and management responsibilities	<ul style="list-style-type: none">• The other party of contract pays all work-related expenses such as maintenance fees of lorry, parking fees and cross-border lorry driver registration fees, etc.• The other party of contract provides employees with free transport between different work locations
Responsibilities in investment and management	<ul style="list-style-type: none">• The other party of contract liaises with client directly for businesses and holds the rights to assign clients to the worker• Cannot determine or change the level of his/her own remuneration for service rendered
Right to hire substitutes and helpers	<ul style="list-style-type: none">• Perform the assigned work in person without hiring helpers to assist in the work; if helpers are hired, the cost will be borne by the other party of contract
Financial risk over business	<ul style="list-style-type: none">• Receive a fixed rate remuneration, overtime pay and/or performance-based bonus; not required to bear any financial risk
Responsibilities in tax	<ul style="list-style-type: none">• The other party of contract files you as an employee on the tax return
Terms used in communication	<ul style="list-style-type: none">• Being addressed as “employee” by the other party of contract or use other terms that shows the existence of employment

record	relationship
Other factors	<ul style="list-style-type: none"> • Even though the worker is labelled as a self-employed person in the written agreement signed by both parties, that the other party of the contract has neither arranged MPF nor filed tax return for the worker as an employer, the court opined that such an agreement could not rule out the employer-employee relationship should this relationship exist as indicated by the circumstantial evidence

Part C – Result (For reference only)

Based on the key factors considered by the court in past court cases and the information you have provided in Part A, should most of your working arrangements were best described by sentence (A), you possess more of the features of an employee. On the contrary, should most of your working arrangements were best described by sentence (B), you possess more of the features of a self-employed person/contractor.

Nevertheless, it should be pointed out that there is no one single conclusive test to distinguish an “employee” from a “self-employed person”. While different cases have different factors to be considered, there is no hard and fast rule as to how important each factor should be. Hence, all relevant factors of the case should be taken into account.

In case of a dispute, the final interpretation will rest with the court.

For further enquiries about the differences between an “employee” and a “self-employed person/contractor”, you may:

Call the enquiry hotline: 2717 1771 (the hotline is handled by “1823”); or

Visit the following offices of the Labour Relations Division of the Labour Department:
<https://www.labour.gov.hk/eng/tele/lr1.htm>.