**The Roman Catholic Diocese of East Anglia**

**Employed vs self-employed checklist**

**GARDENERS**

A variety of factors are relevant in deciding whether a person is employed or self-employed. Generally, an employee will be engaged under a contract of service whereas a self-employed person will have a contract for services. An employee should be paid via Pay as You Earn (PAYE) and will have employment rights and responsibilities.

Whilst there is no exhaustive list to determine whether a person is employed or self-employed, we have summarised some of the common factors to be considered below. We would recommend ticking each statement if it applies and reviewing the totals for both employed and self-employed status. A further review should be conducted if there are strong indications for employment, either for particular factors or in total.

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| --- | --- | --- | --- | --- |
| **Factors** | **Self employed** | **Tick** | **Employed** | **Tick** |
| Personal service  | Will provide own gardening services but may also subcontract work to others, or bring in outside assistance. |  | Only provides a personal service.  |  |
| Mutuality of obligation | Is free to accept or turn down work. You (the Diocese) are under no obligation to offer any work or further work.  |  | You are obliged to offer work. The employee is obliged to do as you request.  |  |
| Right of control  | Will be in control of most aspects of the gardening work done. |  | You control what, how, when and where the gardening work is done. |  |
| Right of substitution  | May subcontract work or bring in assistance to help. |  | An employee will not have the right to appoint a substitute.  |  |
| Provision of own equipment  | Will normally supply all gardening equipment and bring in or hire their own machinery. Insurance is a personal responsibility (public liability, employers liability etc.).  |  | May sometimes supply own gardening equipment, however you provide all the materials and tools needed for the individual to complete the job. You will be responsible for insuring the individual and the gardening work that they do on site. |  |
| Financial risk/ability to profit  | Individual will quote on a job by job basis.  |  | The individual is paid for the gardening they do such as per hour. They are entitled to the National Living/Minimum Wage and statutory holiday entitlement. |  |
| Length of engagement | This will generally be a fixed term or short term contract.  |  | Contract is open ended after probation period (if any).  |  |
| Right to terminate contract  | Can terminate contract if you are in breach of contract.  |  | Individual has to give notice under a specified contract term.  |  |
| Personal factors  | They have been engaged due to their skills and reputation as a gardener.  |  | Personal factors may be the reason for appointment.  |  |
| Mutual intention | Intention of both parties should be stated in a written contract which encompasses things like the services, fees payable, length of contract, how it can be terminated by either party.  |  | Both parties have agreed written terms of employment and the employee will have enforceable rights under employment law.  |  |
| Opportunity to profit  | Individual can make a profit if their work is performed efficiently as fee is payable for delivery of service. The individual can make a profit from recharging and making a profit on their gardening materials.  |  | The individual is only able to profit under a bonus or incentive scheme.  |  |
| Employee type benefits  | The individual is unlikely to be entitled to any benefits.  |  | Part of pension scheme, are able to enjoy any onsite facilities. The individual can attend Diocese functions. |  |
| **Total** |  |  |  |  |