

Employee status cannot be ‘negated’ by post termination correspondence

In a recent case, Mr Ahsan was offered employment by a company but refused this, stating that he would prefer to be a self employed consultant. He attempted to negotiate terms for the consultancy work but by the time he actually started work in April 2007 nothing had been agreed. The company had written to him in February 2007 referring to his salary, notice, sick pay and other conditions.

In practice, Mr Ahsan had substantial control over his working hours and schedule. He was paid monthly by cheque. He had agreed to bear responsibility for tax and national insurance contributions owed but in practice the company withheld an amount roughly equivalent to tax and national insurance from each month's salary. In late 2007, the company terminated the arrangement due to performance reasons. No P45 or P60 was requested or provided. The company and Mr Ahsan subsequently agreed some wording that referred to Mr Ahsan as self employed.

The Employment Appeal Tribunal held that it was incorrect to focus on post termination documents when the employment contract was set out in the February 2007 letter and when terminating the contract, the company had given Mr Ahsan three months' notice, as stated in the letter. Mr Ahsan was also given a copy of the staff handbook, which was clearly intended for employees.

It is always advisable for organisations to ensure that contracts are consistent with the right legal status. Organisations that engage consultants, contractors or casual workers should ensure that appropriate contracts are used and that these are implemented in practice.

Mr K Ahsan v Westmead Business Group (In Liquidation) UKEAT/0480/09/RN

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