

EMPLOYMENT RELATIONSHIP:

DEFINITION, DETERMINATION, ADVANTAGES



► What employment relationship is

A relationship in which a natural person provides an activity to other natural or legal person for remuneration and under her/his direction, supervision and control



Why it is important to establish it

Labour and occupational safety and health legislation only applies to employment relationships

► How to determine the existence of an employment relationship

Firstly, consider the facts relating to the performance of work and the remuneration of the worker, regardless of the type of contract signed or arrangements made between the parties (principle of substance over form)



Main indicators: subordination or dependence of the activity provider in relation to the beneficiary



A legal presumption of the existence of an employment relationship whenever one or more relevant indicators are present



Transfer of the burden of proof regarding an employment relationship to the employer

► Non-exhaustive list of indicators of an employment relationship



Performance of the work

- The activity provider **personally performs the work** and cannot hand it over to someone else
- The activity provider **performs work similar in content to the work performed by the beneficiary's employees**
- **The activity has a certain schedule** and requires presence at a workplace designated by the beneficiary
- The activity provider **uses equipment and materials belonging to the beneficiary**
- The activity provider **holds a certain position in employer's organizational structure**
- The activity provider **does not assume the financial risks of the execution of the work**
- The activity provider **is mostly responsible for the work process, rather than its result**



Remuneration

- **In return for the work done the activity provider regularly receives a fixed amount of money or payments in kind:** food, accommodation, transport and others
- **The activity beneficiary covers the cost of business trips**
- **The activity provider enjoys paid weekly days off, national holidays and annual leaves**



Subordination

- **The activity provider:**
 - **has to obey orders** of the beneficiary
 - **can be subject to disciplinary action** by the beneficiary
 - **works under instructions, control and supervision** of the beneficiary or their representative
 - **has to comply with a work schedule** and ask authorization for absences



Economic dependency

- **Remuneration from beneficiary is the only or main source of income** of the activity provider
- **The activity provider performs work exclusively or mostly to the beneficiary**
- He/she **cannot set the price** for the work

► Advantages of an established employment relationship



For the workers:

- **Protection from arbitrary dismissals**
- **Regular salary** no lower than minimum wages
- **Weekly working time limits**
- **Breaks, daily and weekly rest**
- **Paid annual leave**
- **Right to safe and healthy working conditions**
- **Protection against discrimination**
- **Training and career advancement**
- **Trade union membership**
- **Adequate social protection**
- **Certified work experience**
- **Easier access to loans**
- **Labour rights protection**



For the employers:

- **Satisfied, motivated and loyal workers**
- **Less human resources turnover**
- **Retaining and increasing expertise** and knowledge within the organization
- **Lower costs and time for search, recruitment** and training of **new employees**
- **Better work efficiency and productivity**
- **Lower risk of:**
 - Instability
 - Legal and financial liabilities
 - Having to compensate workers in case of work-related accidents and diseases



For the state:

- **Reduction of undeclared work**
- **More revenue to state budget**, social security and pension funds
- **Better public services** — healthcare, education, social protection, security, defence etc.
- **Economic and social stability**

► Additional resources [here](#)

- ILO Employment Relationship Recommendation, 2006 (No. 198)
- Directive (EU) 2019/1152, on transparent and predictable working conditions
- Background paper on employment relationship
- Power Point Presentation