



INTERNATIONAL LABOUR
LAW NETWORK

the
**INTERNATIONAL
LABOUR LAW
NETWORK
NEWSLETTER**

SEPTEMBER

2026

EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS IN THE EUROPEAN UNION MEMBER STATES AND IN SWITZERLAND AND IN THE UK

We are pleased to present the latest edition of the ILLN Newsletter. This issue focuses on bonus policies, examining how employers structure, implement and modify bonus and other variable remuneration schemes, and the extent to which such payments are discretionary or give rise to enforceable entitlements, as applied across selected EU member states, Switzerland and the UK. While the legal frameworks, the weight given to discretion clauses and the consequences of withholding or altering bonuses vary considerably between jurisdictions, a common thread runs through each contribution: the need to strike a proportionate balance between the employer's legitimate interest in flexible, performance-linked reward structures and the employee's right not to be denied payments that have, in substance, become part of the agreed terms of employment.

This cross-jurisdictional overview highlights both shared principles and key differences in how bonus policies are regulated and enforced across Europe.

Featured ILLN Member states:

1	Belgium
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EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

The key distinction: subordination. Under Belgian law, a person may perform work either as an employee under an employment agreement or as a self-employed contractor under a services agreement. The essential difference lies in the existence of a relationship of authority: an employer has the right to give instructions and exercise hierarchical control over an employee.

Importantly, that authority does not need to be exercised permanently. The possibility for the employer to exercise such authority may be sufficient. Conversely, the mere fact that a client gives instructions to a contractor does not automatically create an employment relationship: instructions that are necessary for the proper performance of the agreed services remain compatible with self-employed status.

The qualification chosen by the parties is relevant, but only insofar as it corresponds to the way in which the relationship is actually performed. Formal elements such as invoicing through a company, VAT registration or registration as self-employed are therefore not decisive.

Protection versus contractual freedom. An employment agreement gives access to the full protection of Belgian labour law: sectoral minimum remuneration, statutory notice periods and termination indemnities, protection against manifestly unreasonable dismissal, annual leave and holiday pay, guaranteed remuneration during certain periods of incapacity for work and working-time protection. Non-compete clauses are also subject to strict statutory requirements concerning, among other things, remuneration thresholds, geographical scope, duration and compensation.

A self-employed contractor enjoys considerably more contractual freedom. The parties may, in principle, determine the fee, duration, termination arrangements, exclusivity, intellectual-property provisions and post-contractual restrictions themselves. There is, for instance, no statutory notice period that generally applies when terminating a services agreement.

This contractual freedom is nevertheless not unlimited. General contract law applies and, in B2B relationships, Belgian law prohibits certain unfair contractual terms and abuse of economic dependence.

Different social-security regimes. The distinction also has important financial consequences. For an employee in the private sector, the personal social-security contribution is in principle 13.07% of gross remuneration, while the basic employer contribution in the private profit sector is approximately 25%, subject to reductions and additional contributions.

A self-employed person pays his or her own quarterly social-security contributions. The basic contribution rate for a self-employed person in a main occupation is currently 20.5% of net taxable professional income up to the applicable income threshold. The social protection attached to both regimes also differs, particularly as regards unemployment protection.

These differences in labour and social-security costs partly explain why the qualification of the relationship can become an important issue during a social inspection.

The risk of false self-employment. Belgian law does not allow the parties simply to choose the most convenient status. The Employment Relations Act, contained in the Programme Act (I) of 27 December 2006, identifies four general criteria for determining the true nature of the relationship: the parties' intention, freedom to organise working time, freedom to organise the work and the possibility of exercising hierarchical control.

The assessment is always factual. A well-drafted consultancy agreement will therefore not prevent requalification if the contractor is, in practice, treated in substantially the same way as an employee.

Additional presumptions apply in certain sectors considered particularly exposed to false self-employment, including construction, security, transport and cleaning. In these sectors, the legislation provides a list of nine specific criteria. Where more than half are met, a rebuttable presumption of an employment relationship may arise. Specific rules also exist for work performed through digital labour platforms. Requalification can be expensive. If a supposedly self-employed relationship is requalified as employment, the consequences may be substantial. The employer may face claims for unpaid social-security contributions, together with surcharges and interest. The individual may also claim employment-related entitlements such as salary adjustments, holiday pay, sectoral benefits, overtime payments and, depending on the circumstances, termination indemnities.

As a rule, the limitation period for social-security contributions is three years. However, a ten-year period may apply where the NSSO establishes fraudulent conduct or deliberately false or incomplete declarations. Criminal or administrative sanctions under the Social Criminal Code may also arise in certain circumstances.

The financial exposure can therefore extend considerably beyond the difference between the social-security contributions applicable to employees and self-employed persons.

Some practical precautions. In practice, the contract is only the starting point. Companies engaging self-employed contractors should regularly verify whether the contractual arrangements still correspond to the day-to-day reality.

A genuine contractor should retain meaningful freedom over the organisation of the work and working time. Requiring fixed working hours, approving holidays, carrying out employee-style performance appraisals or exercising disciplinary authority may point towards an employment relationship.

Conversely, the possibility of working for several clients, using one's own resources, bearing a genuine economic risk and, where appropriate, arranging for replacement may support self-employed status.

Terminology is not decisive, but it should reflect the intended relationship. References to a "salary", "annual leave", a "manager" or a "dismissal" should therefore be avoided in contractor documentation and communications.

Particular caution is required when an employee leaves the payroll and immediately continues substantially the same activities for the same company as a self-employed contractor. Simply replacing an employment agreement with a consultancy agreement, without changing the actual organisation of the work, will not eliminate the risk of requalification.

When in doubt, obtain a ruling. Belgian law provides a useful mechanism where the qualification remains uncertain. The parties may request a ruling from the Administrative Commission for the Regulation of the Employment Relationship, either before the relationship starts or, subject to the applicable conditions, shortly thereafter.

The Commission assesses the proposed or existing relationship on the basis of the statutory criteria. Its decision provides significant legal certainty, provided of course that the relationship is subsequently performed in accordance with the facts and arrangements submitted to it.

For companies making extensive use of independent contractors, a periodic review of existing relationships is therefore advisable. A contractor relationship that was properly structured at the outset may gradually evolve into something that, in practice, looks much more like employment.





EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

For many businesses, contractor arrangements are an attractive alternative to employment, particularly where flexibility or specific expertise is needed. Czech law, however, looks beyond the contractual label and assesses whether the individual is genuinely independent or effectively works under conditions characteristic of employment. Choosing the wrong model may expose companies to significant legal and financial risks.

Substance over form

The key question is whether the individual performs dependent work. Under the Czech Labour Code, dependent work is characterized by personal performance on behalf of the employer, according to the employer's instructions and within a relationship of superiority and subordination. It must be performed for remuneration, at the employer's cost and responsibility, during working hours and at the employer's workplace or another agreed place. The legal classification depends on the actual substance of the relationship rather than the label used by the parties. Even where an individual operates under a trade license and provides services under an independent contractor agreement, the relationship may still be regarded as dependent work if the factual circumstances correspond to its characteristics. In such a case, work performed outside an employment relationship may qualify as illegal work.

Employment vs. independent contractor status

An employee works within the employer's organizational structure and under its direction. The relationship is governed by the Czech Labour Code, including statutory rules on working time, annual leave and termination. By contrast, a self-employed contractor carries out independent business activity in their own name, on their own account and responsibility, and generally bears the associated business risk. The relationship is governed primarily by the Civil Code and the parties' contractual arrangements, which allows greater flexibility in areas such as remuneration, liability and termination rights. The risk of disguised employment

key compliance risk is the misclassification of employees as independent contractors, where a formally self-employed individual in fact works under conditions corresponding to an employment relationship. Labour inspectorates assess how the work is actually performed rather than relying solely on contractual documentation. Relevant indicators may include direct managerial supervision, fixed working hours, integration into internal teams, economic dependence or mandatory attendance at the client's workplace. No single factor is necessarily decisive, and the relationship must be assessed as a whole. If illegal work is identified, fines may be imposed. Depending on the circumstances, additional liabilities may also arise in relation to taxes, social security and health insurance contributions.

Practical implications for employers

Before engaging an individual as a contractor, businesses should assess how the relationship will operate in practice, not merely how it is documented. The contractual terms should reflect the intended cooperation, while the contractor should retain genuine independence in organizing and performing the services. Particular caution is advisable in long-term engagements, although duration alone is not decisive. The practical setup may, however, change over time and gradually acquire features characteristic of dependent work. Regular reviews of contractor relationships can therefore help reduce compliance risks.

Upcoming legislative changes

This area is currently subject to legislative developments involving potential changes to the definition of dependent work and the related sanctions. Misclassifying employees as independent contractors is expected to remain illegal work. The proposal also envisages a new monetary sanction linked to unpaid social security and health insurance contributions. The amendment is currently expected to take effect on 1 January 2027, subject to certain exceptions. However, as the proposal is still in the legislative process, the final wording, timing and practical impact may still change.

Conclusion

The distinction between an employee and an independent contractor depends primarily on the actual nature of the relationship rather than contractual terminology. While contractor arrangements offer flexibility, they also create compliance risks if dependent work is performed in practice. Employers should therefore assess each engagement individually and ensure that both the contractual documentation and day-to-day cooperation remain consistent with the chosen legal model. These considerations are becoming even more relevant in light of the ongoing legislative changes, which are expected to reshape this area in the near future.





EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

Employee or Independent Contractor: Why the Contract Alone Does Not Determine the Relationship

The rise of freelancing, umbrella employment and digital platforms has once again brought an old question to the forefront: what, from a legal perspective, makes someone an employee? Under French employment law, the answer never depends on the title given to the contract, but on the actual circumstances in which the services are performed.

1. What is the criterion that distinguishes an employee from an independent contractor?

An employment contract is based on three cumulative elements: the performance of work, remuneration and a legal relationship of subordination. The latter is the decisive criterion.

The French Supreme Court defines legal subordination as the performance of work under the authority of an employer who has the power to give orders and instructions, monitor their execution and sanction breaches by the subordinate. By contrast, an independent contractor freely organises their business, chooses their clients and bears the economic risk associated with their activity.

Key point: the classification given by the parties — “services agreement”, “consultant”, “self-employed” — is irrelevant. What matters is the actual circumstances in which the work is performed: an agreement drafted as an independent services arrangement may be reclassified as an employment contract if the facts reveal a relationship of subordination.

2. Does professional registration protect against reclassification?

Persons registered with the relevant professional registers (Trade and Companies Register, Trades Register, micro-entrepreneurs, company directors, etc.) benefit from a presumption of self-employment.

However, this is a rebuttable presumption. It may be overturned where it is established that, in practice, the services are performed in circumstances demonstrating a relationship of subordination towards the contracting party. The fact that the services are invoiced through a company does not, therefore, in itself prevent reclassification.

3. What factual indicators do the courts consider?

In addition to the exercise of powers to give orders and impose sanctions, the courts rely on a “bundle of indicators” (faisceau d’indices), including in particular:

- integration into an organised service: working on the company’s premises and using equipment provided by the contracting party rather than the contractor’s own equipment;
- economic dependence, in particular the absence of the contractor’s own client base;
- more indirect indicators: requiring the contracting party’s approval for holidays/absences, being listed in the company’s organisational chart, or presenting oneself as belonging to the company (on social media, in an electronic signature or on business cards).

Recent case law illustrates the consistent application of this approach: the lower courts have reclassified the relationship of a consultant:

- whose activities were carried out within an organised service and under the supervision of a partner who gave them orders and instructions;

who worked full-time and exclusively for the contracting party, whose working time was monitored and whose holidays were subject to approval;

- based on the contractor’s inclusion in the organisational chart, the provision of equipment, the receipt of orders and instructions, and the absence of freedom to set the price.

4. Who can seek reclassification, and when?

Reclassification may be sought by:

- the worker themselves, most commonly when the commercial relationship comes to an end (with the burden on them to establish the existence of an employment contract);
- URSSAF, as part of an audit concerning the conditions under which the services are performed and remunerated;
- the Labour Inspectorate, which may issue a report for undeclared work (travail dissimulé).

5. What are the consequences of reclassification for the company?

From a civil and social security perspective, the consequences may include back pay for the previous three years (where the fees paid were lower than the remuneration that would have been due), as well as back payment of bonuses, overtime and paid holiday entitlement. In the event of termination, the company may also be liable for termination indemnities, notice pay and damages for dismissal without genuine and serious cause. If undeclared work is established, a lump-sum indemnity equal to six months’ salary may also be payable. It may also result in an adjustment of social security contributions, calculated on a flat-rate basis or “on an actual basis” using the fees paid.

From a criminal law perspective, undeclared work through the concealment of salaried employment is punishable by up to three years’ imprisonment and a €45,000 fine for the company’s director (€225,000 for the legal entity), together with possible additional penalties (exclusion from public procurement contracts, confiscation, publication of the judgment, etc.).

What should these amounts be calculated on? According to a recent case law: reclassification places the service provider in the position they would have been in had they been employed from the outset under a permanent employment contract. In practical terms, back pay, notice pay and the undeclared work indemnity must be calculated by reference to the reconstructed reference salary determined on the basis of the salary scales applicable within the company — rather than the fees actually received. The statutory severance indemnity, however, takes into account the fees actually received by the service provider.

6. How can the contractual relationship be secured?

Where a risk has been identified, three options are available, each with its own implications:

- offer an employment contract, with the risk that, if it is refused, the commercial relationship may have to be terminated;
- terminate the services arrangement, which exposes the company to a subsequent claim for reclassification;
- restructure the services agreement so that it genuinely reflects an independent relationship — by varying the scope and duration of assignments, avoiding exclusivity, ensuring genuine autonomy in the organisation of the work, maintaining a plurality of clients and allowing at least some freedom in setting fees.





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1. General

Under German employment law, the distinction between an employment relationship and freelance work is governed by Section 611a(1) of the German Civil Code (BGB) and the relevant case law of the Federal Labour Court (BAG). Key factors in this regard include personal dependence, the obligation to follow instructions, external control and integration into the organisation's work processes. A comprehensive assessment of all the circumstances of the individual case is always decisive. If what was thought to be a freelance arrangement subsequently turns out to be an employment relationship, matters such as protection against dismissal, employee protection rights and remuneration issues are particularly relevant under employment law. In addition, there are separate tax and social security law implications regarding income tax and social security contributions.

2. Criteria for distinction under employment law

Under Section 611a(1) of the German Civil Code (BGB), an employee is defined as a person who, in the service of another, performs work subject to instructions and external control in a relationship of personal dependence. The right to issue instructions may relate to the content, execution, time and place of the work. A person is subject to instructions if they are not, in essence, free to organise their work and determine their working hours.

3. The decisive factor: actual performance

Case law makes it clear that it is not the contractual designation as 'freelance work' that is decisive, but the actual practice in place. If the contract and the actual practice contradict one another, the actual performance is decisive. If the actual performance proves to constitute an employment relationship, the contractual designation is irrelevant.

4. Typical distinguishing criteria

The following characteristics generally indicate an employment relationship:

- Being subject to instructions regarding the content, execution, timing, duration and location of the work
- Integration into the client's work organisation
- Lack of substantial freedom to determine one's own work and working hours
- A division of labour in which the client plans and organises the work and effectively precludes the worker from organising the outcome of their work independently

The Federal Labour Court expressly distinguishes between the right to issue instructions under an employment agreement and that which is compatible with self-employment: instructions given to self-employed persons are typically matter-specific and results-oriented. The right to issue instructions under an employment agreement, by contrast, is person-specific as well as process- and procedure-oriented and concerns the manner in which the service is provided.

The following characteristics indicate freelance work:

- The key factor in favour of self-employment is that the person providing the service is essentially free to organise their work and determine their working hours
- Working for several clients
- Lack of, or only minimal, integration into another organisation's work structure
- Own entrepreneurial freedom of decision-making
- Bearing one's own business risk
- Own business premises or independent organisation of service provision

At the same time, the Federal Labour Court points out that mere deadlines or time limits do not, in themselves, constitute an employment relationship. Deadlines may also be set for freelancers. [BL 1.1] However, the situation changes if, in addition to the 'whether' and 'when', the 'how' of the task's completion is also specified.

5. Consequences under employment law of incorrect classification

If a person believed to be a freelancer is in fact classified as an employee, it must be examined incidentally in proceedings concerning protection against unfair dismissal whether an employment relationship existed at the time the notice of dismissal was received. If an employment relationship exists, the Dismissal Protection Act may apply, provided the other conditions for its application are met. However, the mere finding of an employment relationship does not automatically mean that a specific dismissal is invalid. This depends on the relevant statutory provisions and case law. With regard to remuneration, it is not automatically the case that the fee agreed for freelance work would also be owed as remuneration for employment. In the absence of specific evidence of a continuing remuneration agreement, the customary remuneration is payable in accordance with Section 612(2) of the German Civil Code (BGB). Where an employment relationship is assumed to exist, the statutory provisions for the protection of employees apply, such as the Working Hours Act, the Continued Remuneration Act, the Maternity Protection Act, etc.

6. Tax implications

In the case of income from employment, payroll tax must be levied by deduction from the employee's wages. The employee is liable for the payroll tax; the employer must withhold and pay it on the employee's behalf. Within the relevant framework of the tax limitation period the employer is liable for the payroll tax that they are required to withhold and pay. To the extent of this liability, the employer and the employee are jointly and severally liable. Internally, the employee is, in principle, the sole debtor of the tax claim. By making a back payment, the employer is settling a debt owed by another party and may therefore, in principle, claim reimbursement, provided there is no net salary agreement in place.

7. Consequences under social security law

The employer must pay the total social security contributions. This also includes the employee's share of contributions, which the employee is economically responsible for. Upon discovery of an employment relationship subject to social security contributions, the employer must pay the social security contributions retrospectively from the start of the employment relationship, subject to the limitation period. The employer may only seek recourse or deduct the employee's contribution from the employee's pay for the last three months, and only by means of a direct deduction from wages. For any retroactive period beyond this, the employer bears the financial risk and can no longer claim the employee's contribution.





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Italian law recognises a wide range of working arrangements, from full subordination to complete autonomy.

The boundaries between them, however, are not always clear in practice. Italian courts may disregard the label chosen by the parties and examine how the relationship is actually performed in order to determine its true legal nature.

Article 2094 of the Italian Civil Code defines the employment relationship by reference to subordination: the employee works within the employer's organisation and is subject to the employer's direction and control. In essence, the employee makes his or her working activity available to the employer on an ongoing basis, rather than undertaking to deliver a result independently. Relevant factors include compliance with instructions, stable integration into the employer's organisation, fixed working hours and periodic remuneration unrelated to the achievement of a specific result. None of these factors is decisive in isolation.

Italian case law has long recognised that subordination does not always require direct or continuous supervision. Executives (*dirigenti*), for example, may have considerable discretion in organising their work and may receive directions only in relation to the company's general objectives. Similarly, a journalist may be an employee even without fixed working hours or detailed day-to-day instructions, where he or she is continuously integrated into the editorial organisation and remains available to meet the employer's needs. In such cases, the assessment focuses on the relationship as a whole and takes account of the nature of the work performed.

Between employment and full independence lies the "*collaborazione coordinata e continuativa*" ("*co.co.co.*"), set by Article 409, no. 3, of the Italian Code of Civil Procedure. The worker performs services on a continuous and predominantly personal basis in coordination with the principal, without being subject to the principal's direction and control. These arrangements are therefore in a grey area: where the principal exercises such powers in practice, the relationship may be reclassified as employment.

Where a continuous and predominantly personal collaboration is employer-organised ("*etero-organizzata*"), meaning that the principal organises the manner in which the work is performed, Article 2 of Legislative Decree No. 81/2015 provides that employment rules generally apply, even if the worker is not classified as an employee. Platform workers have often been found to fall within this model or, in some cases, to be employees.

At the other end of the spectrum, the Italian Civil Code provides for fully independent contractors, who perform manual or intellectual work ("*opera*"). They organise their work autonomously and are not subject to the principal's direction and control. The principal may agree on the scope and expected result of the assignment and verify its proper performance, but may not direct how the work is carried out.

Where a relationship presented as independent contracting is reclassified as employment, the principal may be required to pay any outstanding remuneration and employment entitlements, including paid leave, overtime and severance pay, as well as unpaid social security contributions. The amounts due may also be subject to monetary revaluation and statutory interest. If the relationship has already ended, its termination will also be assessed under employee dismissal rules, potentially triggering the corresponding remedies.





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Under Luxembourg law, the legal classification of a working relationship depends on the actual circumstances in which the services are performed and not on the terminology chosen by the parties. A "consultant", "freelancer" or "independent contractor" is therefore not, in itself, sufficient to exclude the application of employment law.

This issue is particularly relevant for international groups, service providers and businesses where flexible workforce models, project-based engagements and the use of independent professionals are common.

Substance over form

A Luxembourg employment relationship is characterised by the performance of work under the authority and subordination of another party in return for remuneration. In practice, courts look beyond the wording of the agreement and assess the factual reality of the relationship.

The decisive criterion for any classification analysis is the existence of a relationship of subordination, typically understood through the other party's power to give instructions, supervise performance and exercise disciplinary authority. Such assessment is made on the basis of a consistent body of indicators, which typically include the degree of direction and control, the organisation of working time, the place and manner in which services are performed, reporting lines, integration into the client's organisation, economic dependence, the ability to work for other clients, and the extent to which the individual genuinely operates an independent business.

Why misclassification can become costly

If an apparently independent contractor is, in substance, an employee, the relationship may be subject to the mandatory rules of Luxembourg employment law. This may affect remuneration, working time, paid leave, termination rights, social security contributions, tax treatment and other statutory protections, also with a retroactive effect. It may also expose the employer to sanctions, for instance relating to undeclared work.

The issue is sensitive because Luxembourg employment law contains a significant body of mandatory rules from which the parties cannot contract out to the detriment of the employee. Clauses restricting statutory employee rights or imposing more onerous obligations may therefore prove unenforceable. Hence, for employers, a re-classification dispute can potentially trigger employment, social security, tax and litigation considerations, making an early legal assessment substantially more valuable than a purely contractual review.

Independent contractors: genuine independence must be designed — and preserved

A genuine independent contractor model remains legitimate and useful, particularly for specialised projects, cross-border services and temporary or non-integrated assignments. However, the agreement must be designed — and preserved — as genuinely independent. An agreement describing a consultant as independent, while imposing employee-like working hours, reporting structures, close supervision and ongoing work monitoring creates a significant re-classification risk.

Indicators of genuine independence may include freedom to organise working time, the ability to work for multiple clients, use of the contractor's own tools and infrastructure, the right to refuse assignments, the possibility of subcontracting or substitution where appropriate, invoicing rather than payroll treatment, and self-affiliation with social security.

Cross-border arrangements require an additional layer of analysis

For international groups, where an individual works from, or regularly provides services in, several jurisdictions, employment status, applicable law, social security and tax exposure may need to be assessed together. A multi-jurisdictional classification review may be required in such cases to ensure alignment with EU rules and regulations before the relationship begins, and again when the individual's working pattern changes.

Platform work: an increasingly strategic issue

The distinction is becoming even more important in the platform economy. Directive (EU) 2024/2831 on improving working conditions in platform work requires Member States to introduce procedures facilitating the determination of the correct employment status of platform workers.

The assessment must focus on the facts relating to the actual performance of the work, including the role of automated monitoring and decision-making systems, rather than on the contractual label alone. Where facts indicating direction and control are present, the Directive provides for a rebuttable presumption of an employment relationship.

In Luxembourg, no draft transposition law has yet been tabled. The Government has stated that discussions with the social partners are ongoing and that it expects to submit a draft bill at the beginning of the last quarter of this year. With transposition due by 2 December 2026, the issue is already becoming increasingly relevant for digital platforms and businesses using platform-based models across Europe.

A strategic question, not merely a contractual one

For businesses operating in Luxembourg, the real question is not simply which agreement to use, but what relationship is actually being created and whether it is sustainable under Luxembourg and, where relevant, European law. Hence, a robust approach combines employment-law classification, contract drafting, social security and tax considerations, and cross-border analysis. This can make the difference between a flexible workforce model that is legally sustainable and a contractual structure that creates significant reclassification exposure.

Our employment team assists businesses in structuring and documenting workforce arrangements, assessing independent contractor models, managing reclassification risks and advising on issues before they become disputes.





EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

Introduction

Companies operating in the Netherlands can engage individuals both as employees and as self-employed contractors. The key point from an employment law perspective is that the parties cannot determine the legal qualification of their relationship simply by choosing a particular type of contract. An independent contractor agreement must reflect genuine independence, both contractually and in practice.

Employees and self-employed contractors can therefore work alongside each other within the same organization. However, each relationship must be assessed individually. The fact that one person performs similar activities as an employee does not automatically mean that another person performing comparable work cannot operate as an independent contractor. The overall circumstances of the relationship remain decisive.

Accordingly, an individual engaged on paper as a self-employed contractor may, in practice, qualify as an employee, potentially resulting in significant employment, tax, social security and pension law consequences, including retroactively. For the purposes of this contribution, however, I will focus on the employment law implications.

Employee or self-employed contractor?

The distinction between employment and self-employment has received increasing attention in the Netherlands in recent years. Enforcement against false self-employment (in Dutch: schijnzelfstandigheid) has intensified since 1 January 2025. Depending on the circumstances, scrutiny may involve the Dutch Tax Administration (in Dutch: Belastingdienst), the Employee Insurance Agency (in Dutch: UWV) and, where applicable, mandatory industry-wide pension funds.

Legal framework

Under Dutch law, an employment agreement exists where an individual performs work in return for remuneration and in the service of another party. The latter element concerns the existence of a relationship of authority. Therefore, an employee is required to follow the employer's instructions and works under the employer's direction and supervision.

A self-employed contractor, by contrast, performs services independently and generally operates for their own account and risk. In practice, however, the dividing line is not always straightforward. A contractor may also have to comply with certain instructions from the client, while an employee, for instance in a senior, specialist or professional role, may enjoy considerable autonomy.

Which factors matter?

Dutch law requires an assessment of all relevant circumstances. In its case law, the Dutch Supreme Court has identified a non-exhaustive range of factors that may be relevant when assessing whether an employment agreement exists. No single factor is decisive; the relationship must be considered as a whole:

- The nature and duration of the work;
- How the work and working hours are organised;
- The degree to which the individual and the work are embedded in the client's organisation;
- Whether the individual is required to perform the work personally;
- How the contractual arrangement came about;
- How remuneration is determined and paid;
- the amount of that remuneration;
- Whether the worker bears any commercial risk;
- Whether the individual genuinely operates as an entrepreneur in the market, for example by building a reputation, acquiring clients and working for multiple clients.

Contract and practice must correspond

The wording of the contract is not decisive. The practical relationship must also be consistent with the independent contractor status. From an employment law perspective, an additional layer of protection may, in certain cases, be created by contracting with the contractor's own management company rather than with the individual directly. However, such a structure does not in itself prevent potential tax, social security or pension law consequences.

Businesses using self-employed contractors should therefore review, in particular, their actual working practices. Particular attention should be paid to long-term engagements and situations in which contractors perform structural activities within the business alongside employees.

If the relationship is ultimately classified as an employment agreement, mandatory Dutch employment law may become applicable, with potentially retroactive consequences. Depending on the circumstances, this may include rights relating to remuneration, holiday allowance, paid annual leave, continued salary during illness and Dutch dismissal protection. Collective labour agreement and pension obligations may also become relevant.

Conclusion

In practice, the working relationship should therefore be assessed on an ongoing basis against the factors identified by the Dutch Supreme Court, including in Deliveroo, as listed above. There is no standard solution: each relationship requires a fact-specific assessment.





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With regard to the performance of work in Poland, the most important form of employment is the employment contract governed by the Polish Labour Code. However, Polish law also permits work to be performed on the basis of civil law contracts, such as a contract of mandate or a service agreement, as well as within the framework of an individual's own business activity, commonly referred to as self-employment.

It should be noted that, under the Polish legal system, work or services may be performed in various legal forms. The nature of the legal relationship is not determined solely by the title of the agreement concluded between the parties. What is decisive is the actual manner in which the parties perform their respective obligations.

Pursuant to Article 22 § 1 of the Polish Labour Code, an employment contract establishes an employment relationship under which an employee undertakes to perform work of a specified type for the employer, under the employer's direction and at the time and place designated by the employer, while the employer undertakes to employ the employee in return for remuneration. This definition identifies the fundamental characteristics of an employment relationship, including, in particular, subordination to the employer, the obligation to perform work personally, the performance of work at the place and time designated by the employer, and the remunerated nature of employment. The existence of these elements is decisive in determining whether the parties are in fact bound by an employment relationship, irrespective of the title given to their agreement. Under the Labour Code, where a legal relationship possesses the characteristics of an employment relationship such as the performance of work under the employer's direction, at a specified place and time, and for remuneration, it will be treated as an employment relationship regardless of the title of the agreement. Consequently, the conclusion of a civil law contract does not preclude its reclassification as an employment contract if, in practice, it satisfies the statutory criteria laid down by labour law.

Self-employment, also referred to as the B2B (business-to-business) cooperation model, is currently one of the most flexible forms of gainful economic activity regulated by civil law. This model has been developing dynamically in Poland for several years and is particularly popular in industries requiring highly specialised competencies and project-based cooperation. This applies especially to the IT sector, logistics, procurement, customer service, finance, and accounting. Self-employment affords the parties greater flexibility in structuring the terms of their cooperation; however, its use requires that the relationship between the parties genuinely reflects the characteristics of an independent and autonomous business activity.

A defining feature of self-employment is its high degree of flexibility. Individuals providing services under this model are, as a rule, not bound by rigid arrangements concerning their working time or place of work. Their independence and autonomy in organising the manner in which services are provided are also of particular importance. Unlike an employment relationship, self-employment does not involve employee subordination consisting in the performance of work under the employer's direction. The applicable tax and social security contribution regime is likewise different and may, in certain circumstances, be more advantageous for both parties than employment under an employment contract. At the same time, the economic risks associated with the business activity are borne by the self-employed individual. A self-employed individual will typically use their own tools and equipment necessary for carrying out the business activity and may subcontract part of the services, provided that this is consistent with the nature of the business and the terms of the agreement. They are liable for non-performance or improper performance of their obligations under the principles of civil law, and the parties may agree on contractual penalties or compensation obligations. The scope of such liability is significantly broader than that applicable to employees under employment contracts, whose liability is limited and specifically regulated by the provisions of the Labour Code. Unlike employees, self-employed individuals do not enjoy the employment rights granted under the Labour Code, such as the right to paid annual leave, special protection of employment stability, or other benefits reserved exclusively for employees. The manner in which a B2B agreement is terminated depends primarily on the contractual provisions agreed upon by the parties.

Nowadays, the assessment and verification of self-employment arrangements have become particularly significant in light of the reform of the National Labour Inspectorate (Państwowa Inspekcja Pracy), which entered into force on 8 July 2026. The most significant change introduced by the reform is the conferral upon the National Labour Inspectorate of the authority to issue administrative decisions declaring the existence of an employment relationship. This mechanism applies where an engaging entity has concluded a civil law contract despite the existence of the characteristics of an employment. The new regulations do not prohibit the use of civil law contracts or self-employment. They apply exclusively to situations in which such forms are used in a manner inconsistent with the actual nature of the work performed.

It should be emphasised that an administrative decision declaring the existence of an employment relationship is not the first measure available to a labour inspector. Upon identifying an infringement, the inspector will initially issue an order requiring the irregularities to be remedied. Only where such an order is not complied with may the labour inspector issue an administrative decision recognising an employment relationship exists between the parties. Both the worker and the engaging entity are entitled to appeal such a decision before the competent labour court.

Consequently, numerous initiatives are currently being undertaken in Poland to verify the correctness of the forms of engagement used by businesses, including audits concerning self-employment arrangements and civil law contracts. The assessment extends not only to the wording of the agreements themselves but, above all, to the manner in which they are performed in practice. In conducting investigative proceedings, the National Labour Inspectorate examines the actual nature of the parties' cooperation, applying the principle that the legal classification of a relationship is determined by its substantive characteristics rather than merely by the title assigned to it by the parties.





EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

The distinction between an employment contract and an independent contractor agreement is one of the most consequential classifications in Portuguese Labour Law. Increasing regulatory scrutiny has placed this issue firmly at the center of enforcement activity. Misclassification can expose companies to significant legal, financial and reputational risk, making it essential that the contractual structure chosen reflects the true nature of the working relationship.

Under the Portuguese Labour Code (Article 11), an employment contract is an agreement by which an individual undertakes to perform an activity for another person or entity, within that entity's organizational structure and under its authority, in exchange for remuneration. The purpose of the employment contract is the provision of an activity, and the legal subordination of the employee is the typical and distinctive element of this type of relationship. It is from this subordination that the employer derives its power to establish, through orders, directives and instructions, the terms under which the employee's activity is to be performed.

As a result of this subordination, employees are fully integrated into the employer's organization and benefit from the comprehensive protections afforded by Portuguese employment legislation. These protections include, among others, rules governing remuneration, working time, rest periods and annual leave, public holidays and Christmas and vacation allowances, parental rights, occupational health and safety, and the strict regulation of dismissal.

In turn, pursuant to the Portuguese Civil Code (Article 1154), under a service provider agreement, an individual undertakes to deliver a particular service or achieve a specific result while retaining autonomy over how the activity is organized and performed. Unlike an employee, a genuine service provider is not subject to a degree of direction, control or organizational integration. The service provider determines the manner and method of performance, organizes their own availability and, as a general rule, assumes responsibility for their own business risk.

Key indicators of a genuine service provider arrangement include the contractor's freedom to provide services to multiple clients, the use of their own tools and equipment, the absence of a fixed working schedule imposed by the client, and remuneration linked to deliverables or results rather than to the mere availability of time.

Portuguese labour law (Article 12 of the Labour Code) establishes a statutory presumption of employment where certain features are present in the relationship between the individual performing the activity and the entity benefiting from it. In particular, the law considers whether: (i) the activity is performed at a location belonging to, or determined by, the beneficiary; (ii) the equipment and working tools used belong to the beneficiary; (iii) the individual is required to observe starting and finishing times set by the beneficiary; (iv) a fixed periodic payment is made in return for the activity; and (v) the individual performs management or supervisory functions within the beneficiary's organisational structure.

Where at least two of these indicators are present, the relationship may be presumed to constitute an employment relationship, regardless of the label the parties have given to the contract.

The risk of so-called "false self-employment" arises where an individual is formally engaged as a self-employed service provider but, in practice, works in circumstances substantially equivalent to those of an employee. This risk increases where, for example, the service provider works exclusively or predominantly for a single client, follows a schedule determined by that client, is integrated into internal reporting lines, receives detailed instructions regarding performance, uses the client's equipment and systems, receives a fixed monthly fee irrespective of output, or is subject to managerial or disciplinary control.

If an independent contractor relationship is subsequently reclassified as an employment relationship, the consequences can be significant and far-reaching. The individual may become entitled to the full range of employment rights that should have applied throughout the duration of the relationship, including annual leave and the corresponding allowance, Christmas allowance, and other statutory entitlements. Reclassification may also trigger additional social security obligations for the company, including the payment of outstanding employer contributions for the period in question, and expose the company to administrative offense liability.

This issue is particularly consequential when the company seeks to end the relationship. While a genuine service provider agreement may be terminated in accordance with its contractual terms and applicable civil law, the termination of an employment relationship is governed by the considerably stricter rules of the Portuguese Labour Code. If the relationship is found to have been one of employment, a purported termination of the services agreement may be treated as an unlawful dismissal, exposing the company to reinstatement orders and compensation obligations.

Before engaging an individual as a service provider, companies should evaluate not only the terms of the written agreement but also how the relationship is intended to operate in practice — where the individual will be integrated into the company's organizational framework and subject to its ongoing direction and control, an employment contract will generally be the more appropriate and legally safer structure, whereas a service provider arrangement is more likely to withstand scrutiny where the individual retains genuine organizational autonomy. Ultimately, the contractual form must reflect the reality of the arrangement — contractual wording alone cannot convert what is, in substance, an employment relationship into genuine self-employment.





EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

1. Why the distinction matters – and why the issue is more topical than ever

Whether an individual is engaged as an employee or as an independent contractor is far more than a matter of drafting. In Switzerland, the distinction determines the legal framework governing the relationship – from statutory holidays and expense reimbursement to termination protection – while also having important, but separate, social-security consequences. The issue is particularly topical following the Swiss Federal Supreme Court's decision of 18 March 2026 (4A_601/2025), which once again confirms that labels do not determine legal reality.

2. Substance over form: the latest Federal Supreme Court ruling

In that judgement, a company had entered into a "Consulting Agreement" with an individual who was engaged as an Investment Manager. The company argued that the relationship was an assignment rather than an employment contract, relying, among other things, on the contractual designation, invoicing through a third-party company and the absence of social-security contributions. The Federal Supreme Court rejected that approach. Under Swiss law, the qualification of a contract depends on its actual content and circumstances, not on the label chosen by the parties. The decisive feature distinguishing employment from an assignment is, in particular, the degree of subordination and integration into the employer's organisation. Here, the individual received a fixed monthly remuneration, was expected to be available from a specified time, worked within extensive time constraints and was required to check e-mails even at weekends. These requirements effectively prevented her from working for other clients. She was also integrated into the company's organisational structure and presented as part of its team. These factors outweighed the formal indications pointing towards self-employment. The Court therefore confirmed the existence of an employment relationship.

3. What are the consequences of sham self-employment?

Where an ostensibly independent contractor is legally found to be an employee, the relationship is subject to the mandatory provisions of Swiss employment law. These include, in particular, the statutory entitlement to paid holidays, reimbursement of necessary business expenses, the applicable statutory and contractual notice periods, protection against abusive termination, continued salary payment in cases of incapacity to work, and the statutory rules governing working time, rest periods and overtime. The issue of abuse of rights requires particular care and has been the subject of significant case law by the Swiss Federal Supreme Court. The Court has repeatedly emphasised that an individual does not automatically act abusively by invoking mandatory employment-law protection after having accepted, or even requested, a different contractual structure. In particular, the fact that the individual preferred self-employment for tax or other personal reasons does not, in itself, prevent them from subsequently relying on mandatory employment-law provisions. At the same time, the possibility of an abuse of rights cannot be ruled out altogether. The assessment remains highly fact-specific and depends on whether the individual's conduct has created a level of legitimate reliance or involved circumstances that make the subsequent assertion of employment-law rights objectively inconsistent with good faith. The case law therefore reflects a careful balancing exercise: the individual's conduct and expectations are relevant, but they do not, without more, override mandatory employment-law protection.

4. Employment law is not social-security law

A crucial distinction is often overlooked: civil-law qualification and social-security qualification are not identical. The Swiss social security authorities apply their own criteria to determine whether an individual is self-employed or employed for social-security purposes. The assessment focuses on the economic reality of the activity and may therefore lead to a different result from a civil court's contractual qualification. Consequently, the absence of social-security contributions is not proof that an individual is genuinely self-employed. Indeed, in the above-mentioned case, the Federal Supreme Court expressly treated the absence of social-security contributions as only a secondary indicator for the purposes of the civil-law qualification.

5. Does interposing a company solve the problem?

The interposition of a company can make a material difference, but it is not a universal solution. Swiss case law recognises that an individual may provide services to a client through a company that he or she controls. Where the company is genuinely the contracting party and the individual performs the services on behalf of that company, the contractual relationship with the client is, in principle, between the two companies. A legal employment relationship between the individual and the client does not arise merely because the individual personally performs the services.

This does not, however, mean that the structure is immune from scrutiny. The decisive question is whether the corporate structure reflects the parties' actual contractual arrangement and is genuinely implemented in practice. If the company is merely a vehicle used to disguise a direct employment relationship, questions of simulation, abuse of rights or other forms of circumvention may arise. The fact that the individual controls the company is therefore relevant, but not in itself sufficient to disregard the corporate structure.

Where the company makes its owner or co-owner available to the client, the arrangement may constitute personnel leasing. However, Swiss law exempts businesses that exclusively make their owner or co-owner available from the personnel-leasing licensing requirement. The structure can therefore be legitimate without a personnel-leasing licence, provided that the company is genuinely the contracting party and the arrangement reflects the actual relationship between the parties.

6. Conclusion

The distinction between employment and self-employment remains a highly fact-sensitive issue in Switzerland, and the latest Federal Supreme Court case law confirms its continuing practical importance. Contractual labels, tax considerations or the form in which remuneration is paid cannot, in themselves, determine the legal qualification of a relationship. What ultimately matters is how the relationship is structured and operated in practice. For businesses, the key takeaway is therefore that contractual documentation should reflect the actual working relationship. Where independent contractor arrangements are intended, genuine entrepreneurial independence should be preserved throughout the engagement. Where a corporate structure is used, it should likewise reflect a genuine contractual relationship rather than merely serve as a formal intermediary. A careful assessment at the outset – and throughout the relationship – can help avoid significant employment-law, social-security and regulatory risks.





EMPLOYMENT AGREEMENTS VS INDEPENDENT CONTRACTOR AGREEMENTS

Businesses engage individuals in a variety of ways to meet their operational needs. Whether hiring a new team member, engaging specialist expertise for a project or seeking additional long-term flexibility within the workforce, it is important to determine at the outset whether the relationship is one of employment or independent contracting because the distinction in legal rights and obligations is significant. How can employers ensure that they are entering into an agreement that correctly categorises the relationship to prevent business exposure to litigation claims, tax liabilities and regulatory penalties?

What is an employment agreement?

An employment agreement governs the relationship between an employer and an employee. An employee is someone who has entered into or works under a contract of employment whether express or implied, oral or written. Employees are integrated into their employer's business, typically subject to the employer's direction and control regarding how, when and where work is performed.

Employees benefit from a wide range of statutory protections, including protection against unfair dismissal, rights to statutory sick pay, family-related leave, paid annual leave, minimum notice periods and protection from unlawful deductions from wages. Employment agreements will usually contain provisions addressing matters such as remuneration, working hours, duties, confidentiality, intellectual property, restrictive covenants and termination. Employers can also be vicariously liable for an employee's wrongful acts committed in the course of employment.

Importantly, the existence of a written employment contract is not the sole determinant of employment status. Workers are individuals who have entered into or work under a contract of employment or any other contract to do work for another party whose status is not that of a client or customer. Workers have some of the same statutory rights as employees, such as protection against unlawful deductions from wages and paid annual leave, but not others such as the right to claim unfair dismissal. Employment courts and tribunals will examine the reality of the relationship and the practical arrangements between the parties.

What is an independent contractor agreement?

An independent contractor agreement governs a commercial relationship between a business and a self-employed individual or service company. Contractors typically provide services to a client while operating their own business and bearing responsibility for how those services are delivered.

Unlike employees, contractors generally have greater autonomy over their working practices. They may provide services to multiple clients simultaneously, supply their own equipment, determine their own working methods and assume a degree of financial risk. Independent contractors are not usually entitled to employee benefits such as paid holiday, statutory sick pay, redundancy payments or protection from unfair dismissal. Instead, their rights and obligations are largely determined by the terms of the agreement entered into with the client. Businesses are not vicariously liable for the wrongful acts of an independent contractor whose services they have engaged through an independent contractor agreement.

How do courts in England and Wales determine status?

The label used by the parties is relevant but not decisive. An independent contractor agreement will not prevent a finding of employment if the reality of the relationship points in that direction, so it is important that the agreement accurately reflects the parties' intentions. Indeed, when assessing employment status, courts and tribunals commonly consider:

- The degree of control exercised by the business
- Whether there is a requirement for personal service or an unfettered right to provide a substitute to carry out work
- The extent of mutual obligations between the parties
- How the individual is paid (for example, an individual's ability to set their own fee or price increases the likelihood of finding independent contractor status)
- Whether the individual bears financial risk
- Whether equipment is provided by the business or the individual
- How the parties present the relationship to third parties (for example, an individual's ability to genuinely market their services freely and to work for third parties is indicative of an independent contractor agreement)

Can employment status change?

Employment status is not necessarily fixed for the duration of a relationship. A contractor initially operating under an independent contractor agreement may gradually become integrated into a business, working exclusively for one client, following prescribed working hours and becoming subject to greater managerial control. Equally, an employee may leave employment and begin providing services as a genuinely self-employed consultant.

As working practices evolve, contractual arrangements should be reviewed regularly to ensure they continue to reflect the reality of the relationship.

Why does the distinction between employee and independent contractor matter?

Misclassifying the individual can have serious consequences. Where an independent contractor is later found to be an employee, a business may face claims relating to unpaid holiday pay, minimum wage entitlements, pension contributions and other statutory rights. There may also be tax implications, including liability for PAYE income tax and National Insurance contributions. On the other hand, an individual engaged by a business as a self-employed contractor will generally have flexibility over their working practices and the freedom to work for multiple clients. Businesses should consider whether they require ongoing control over the party whose services they are engaging and whether statutory rights apply, before entering an agreement that reflects this.

Conclusion

The choice between an employment agreement and an independent contractor agreement is not simply a matter of drafting preference. It requires careful consideration of the commercial objectives and nature of the working relationship and the legal obligations and consequences that flow from it.

Employers should ensure that contracts accurately reflect the reality of the working arrangements in practice, while individuals should understand how their status affects their rights and responsibilities. Careful drafting at the outset and ongoing, meaningful review can help avoid costly disputes and provide clarity for both parties throughout the relationship.





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