

HMRC score on employment status: Football referees may be employees

25 September 2024

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The Supreme Court it seems has given helpful guidance of the scope of the criteria under which someone must fall for them to be an employee. Whilst it has done so in a HMRC tax case, its judgment is useful for employers.

The case concerned whether or not referees of professional football matches in England were self-employed or, instead, were employees and so should have tax deducted at source for their match fees, that is their pay (Revenue and Customs Commissioners v Professional Game Match Officials Ltd [2024] UKSC 290).

It's long been established that for someone to be an employee there must be: 1) "mutuality of obligations" or the "wage-work bargain" which requires the person to provide their personal service and in return to be paid for it; and 2) a "sufficient degree of control" over the person by the employer.

The referees argued that such a level of control did not exist as their alleged employer did not have the practical ability or legal right to intervene during the performance of their duties, that is, while refereeing a football match. The Supreme Court recognised that in many skilled and specialised roles there will be no ability for an employer to directly interfere in an employee's work and noted that whilst, for example, a hospital administrator would not be able to interfere in a surgeon's conduct of an operation, this did not mean the surgeon was not an employee.

The Supreme Court went onto say that the test of whether there is "sufficient control" was whether there was a sufficient "framework of control" which was not necessarily limited to direct instructions being given to the person concerned.

Applying that to the referees themselves, the Supreme Court found that the arrangements by which referees were engaged to officiate at football matches met the requirements of mutuality of obligation and control, but the question of whether the individual contracts for the matches were contracts of employment was remitted to the First-tier Tribunal for determination.

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