



Employee Status

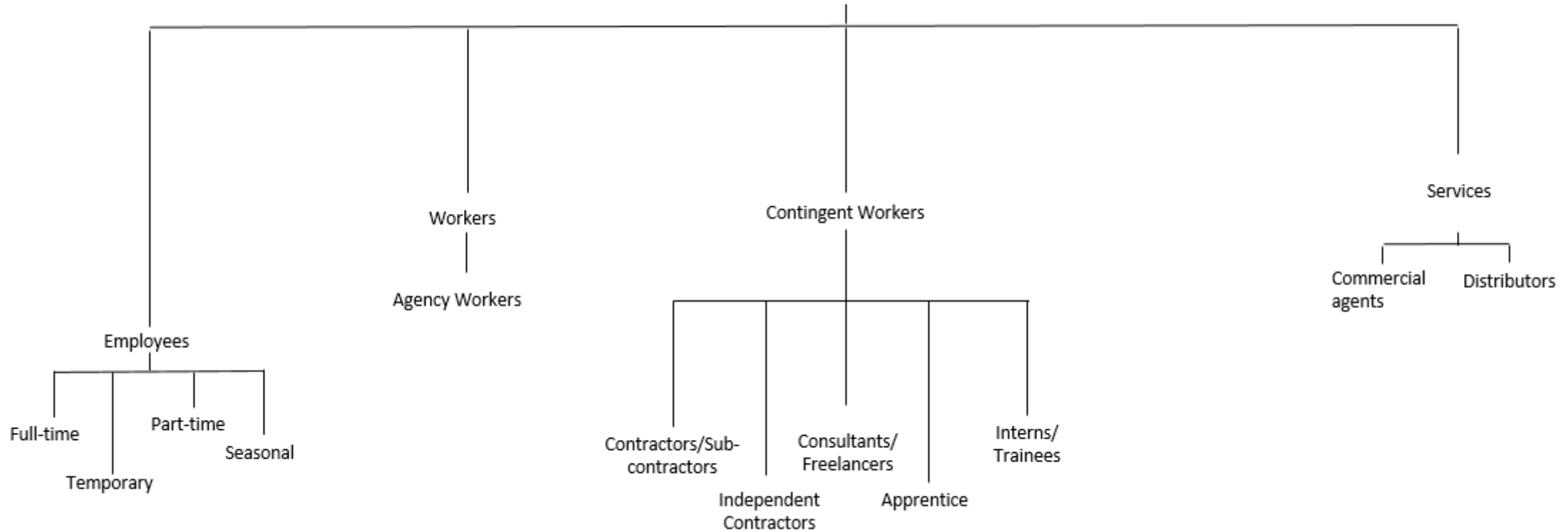
Woodfines' Transport Conference
Thursday 25th November 2021



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Different types of engagement



Employment and Tax Statuses

Employment Law	Tax Law
Employee	Employed
Worker	
Self-employed	Self-employed

Why does employment status matter?

- Statutory rights
 - Employees – all including implied terms, unfair dismissal rights and statutory redundancy payment
 - Workers – Written particulars of employment, protection against unlawful deduction from wages, itemised pay statement, national minimum wage, paid annual leave, rest breaks, maximum working week, protection from whistleblowing, protection under Data Protection Act, discrimination rights
 - Self-employed – none
- Legal claims
 - Legal costs
 - Compensation awards
 - Damage to reputation
- Affect on value of business
- Tax implications

How to identify an employment contract

- Do the terms of the contract represent the reality of the relationship?
- Does a contract of service (employment) exist?
 - Personal service and substitution right
 - Control
 - Mutuality of obligation
- Other factors:
 - Financial risk
 - Payment/profit
 - Equipment
 - Exclusivity
 - Part of the organisation

Cases – When is a self-employed contractor a worker?

- Uber (Supreme Court) [2021]
 - Self-employed or worker? Worker
 - Reason? The services provided by the drivers were very tightly defined and controlled by Uber
- Pimlico Plumber (Supreme Court) [2018]
 - Self-employed or worker? Worker
 - Reason? Personal service, integration into business, uniform and branded van
- Yodel (ECJ) [2020]
 - Self-employed or worker? Self-employed status was likely to be genuine
 - Reason? Couriers were able to manage workload and hours themselves.
- Deliveroo (CAC, High Court and Court of Appeal) [2016, 2018, 2021]
 - Self-employed or worker? Self-employed
 - Reason? Right of substitution was genuine and used in practice