

## **Employment Status**

### **Introduction**

Determining an individual's relationship with the University is complex and is achieved by considering a number of factors. These include the requirements of the University and individual concerned, as well as a number of legislative requirements and definitions.

The decision on which employment group an individual falls into will depend on the relationship between the individual and the University and is supported by a number of tests, which will include, but not limited to:

- Whether there is a contract at all between the University and the individual;
- Whether the individual is required to provide services personally;
- The degree of control over the service provided – who decides when and how the work is done; and
- Whether there is a mutuality of obligation on behalf of the University or the individual, i.e. whether work has to be offered and carried out.

An individual providing work activities will fall within one of the three employment status groups. Depending on which employment group they fall into will also determine their employment rights and responsibilities in the workplace, and how the deduction of income tax and National Insurance contributions are calculated. The three employment status groups are:

- Employee
- Worker
- Self-employed

The fact that an individual may be deemed to have a particular employment status for tax purposes is NOT necessarily determinative of their employment status for employment rights purposes. The HMRC ESI tool determines status for tax purposes only e.g. someone determined as "employee" could be a "worker" or even, in some cases, self-employed for employment rights purposes.

### **Employment status definitions**

#### **Employee**

An employee is an individual who works for an employer under a contract of employment, which is known as "a contract of service". Under a contract of employment, there must be "mutuality of obligations" between the employer and the employee i.e. the employer is obliged to offer and pay the employee for the work, and the employee is obliged to turn up and undertake the work personally. Employees are entitled to all statutory employment rights and are protected by a whole range of legal provisions, including payment of wages, dismissal, redundancy etc.

#### **Self-employed**

A self-employed individual provides the employer with his or her services, but remains independent. The contract between the individual and the employer is "a contract for services". Typically, there may be an ability to provide alternative individuals to carry out the work in question. Services may also be provided through a company. Self-employed workers are not entitled to statutory employment rights.

For income tax and national insurance purposes, the employment relationship is ultimately determined with specific reference to HMRC regulations. The fact that a person is registered as self-employed does not necessarily mean that the work to be provided on behalf of the University is of a self-employed nature.

Where it is believed that an individual may be self-employed, the Defining Employment Status form must be completed to confirm this before any engagement is entered into with the individual.

Where the outcome is unclear as to whether the relationship for work should be either through a commercial contact or casual worker assignment, the engager should contact [Payroll](#) or the [Employment Support Services](#) team for guidance.

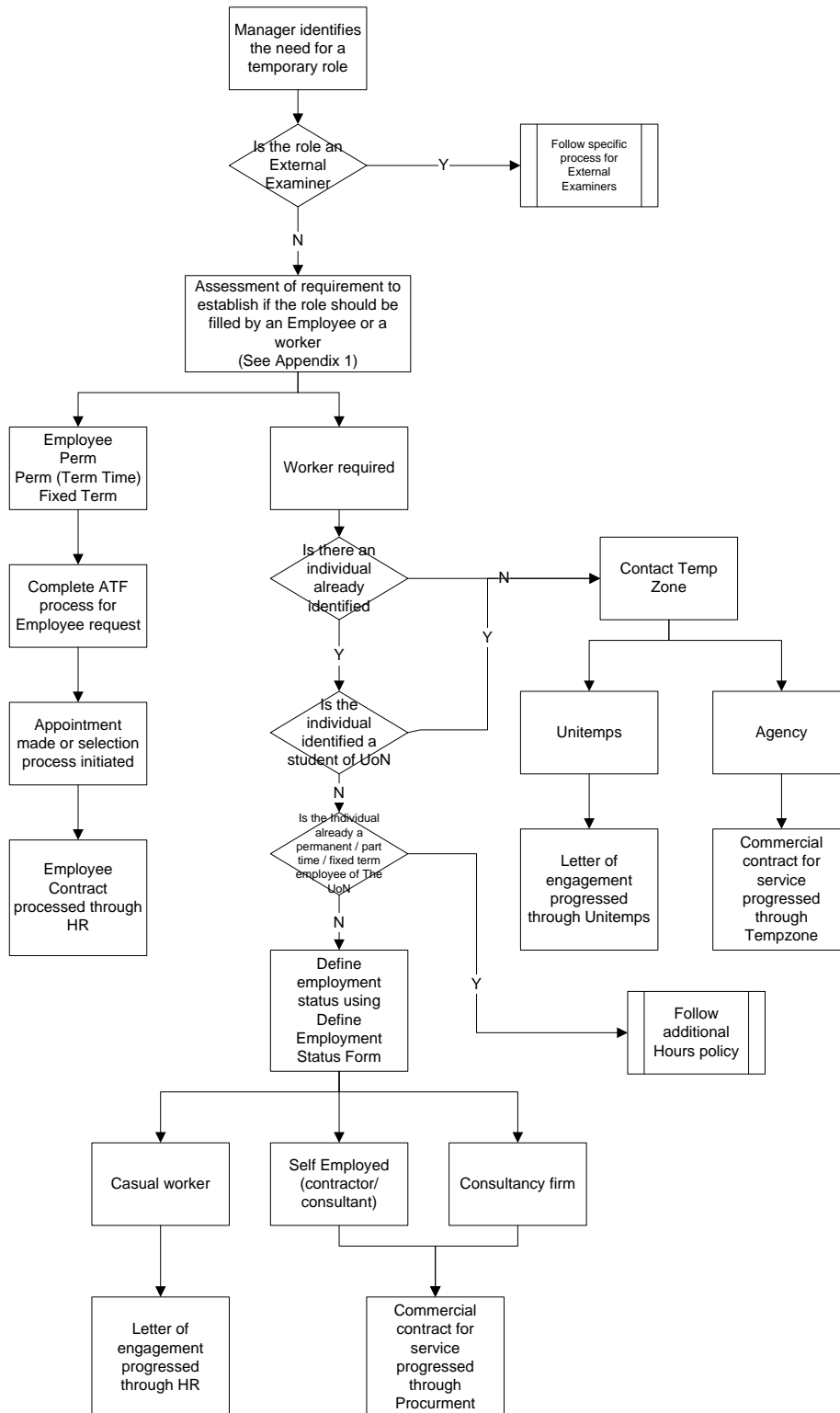
### Workers

Workers are a hybrid category that falls between an employee and self-employed. A worker is an individual who works not under a contract of employment, but under “a contract for services”. Workers are, however, obliged to provide their service personally. There is no obligation for workers to accept and undertake work offered. Similarly, there is no obligation by the employer to offer work. Workers are entitled to some limited employment rights, such as protection under the Working Time Regulations (including holiday) and the minimum wage.

### Summary of employment relationship determining factors

EMPLOYEE	SELF EMPLOYED	WORKER
Employer obliged to offer and pay the employee for the work	Can decide how, when and where to do the work	Employer has no obligation to offer any work
Employee is obliged to turn up and undertake the work personally	Can hire someone else to do the work at their own expense	Worker does not have to accept work offered but once accepted must provide their services personally
It is, using old fashioned terminology, a “master and servant” relationship.	They risk their own money/are in business on their own account	
They work under the control and/or supervision of a manager or supervisor	Agree to do the work for an all inclusive fee and usually have to correct unsatisfactory work in their own time and at their own expense	Whilst at work they are under the supervision of a manager or supervisor
They are more likely to be paid a salary but may be paid on an hourly or piece rate basis	Provide the main items of equipment they need to do the work	They are usually paid on an hourly rate or piece rate basis

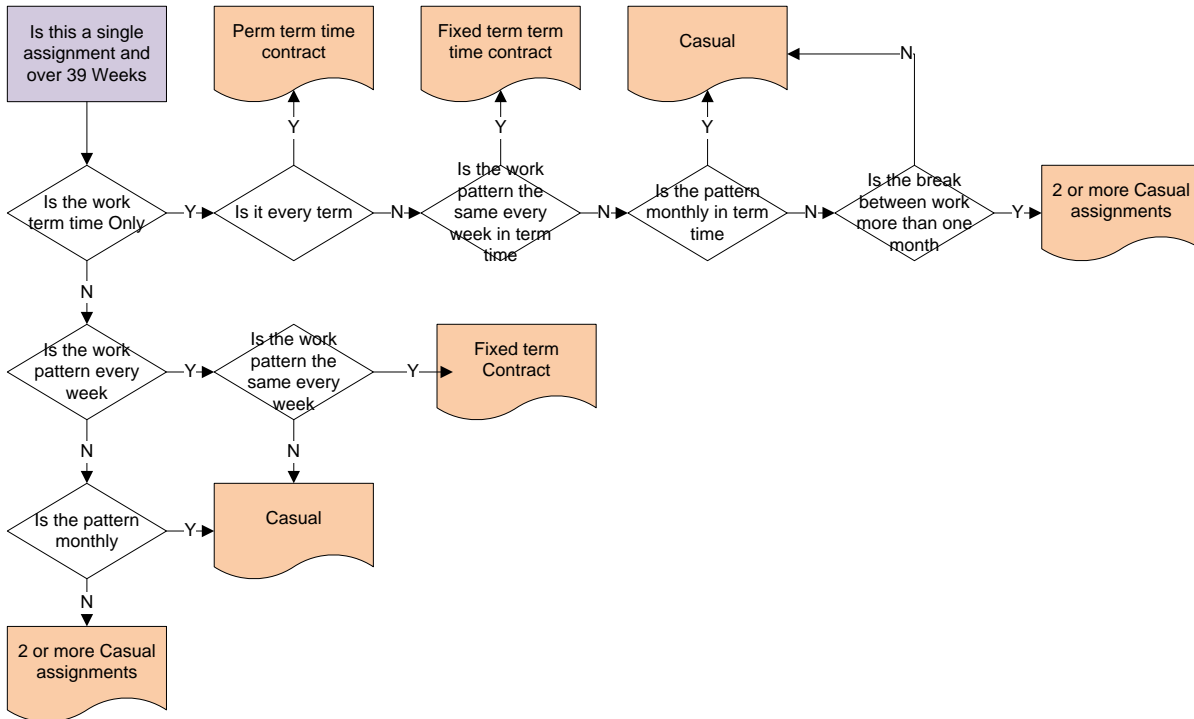
The following Decision Tree will enable managers to determine the appropriate terms of engagement for the particular temporary role or assignment.



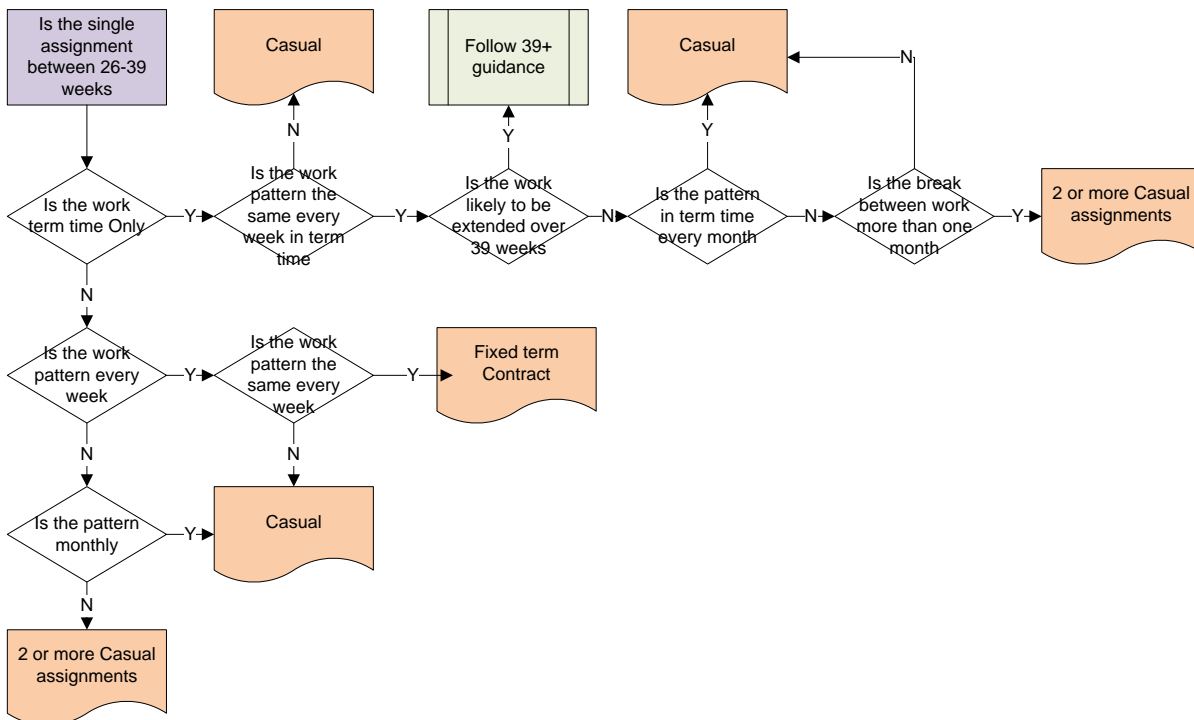
It is vital that the correct assessment is carried out to ensure that any risk relating to Tax or claims for employment rights are managed.

**Appendix 1**

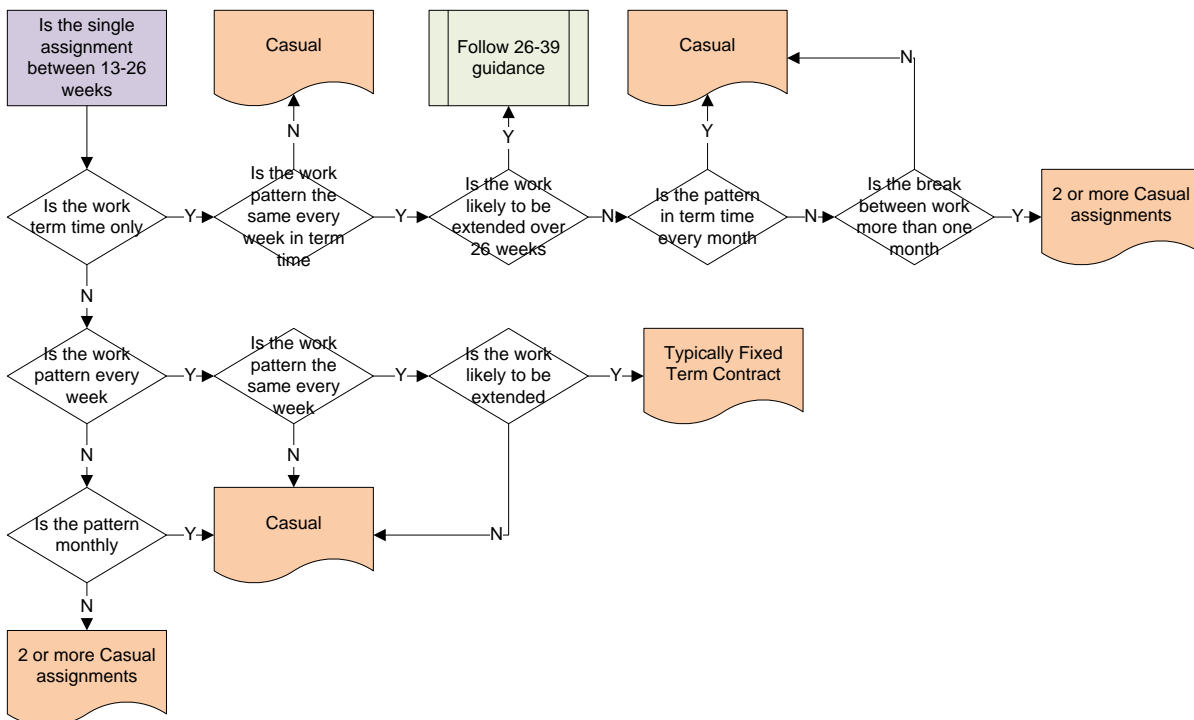
**Over 39 Weeks**



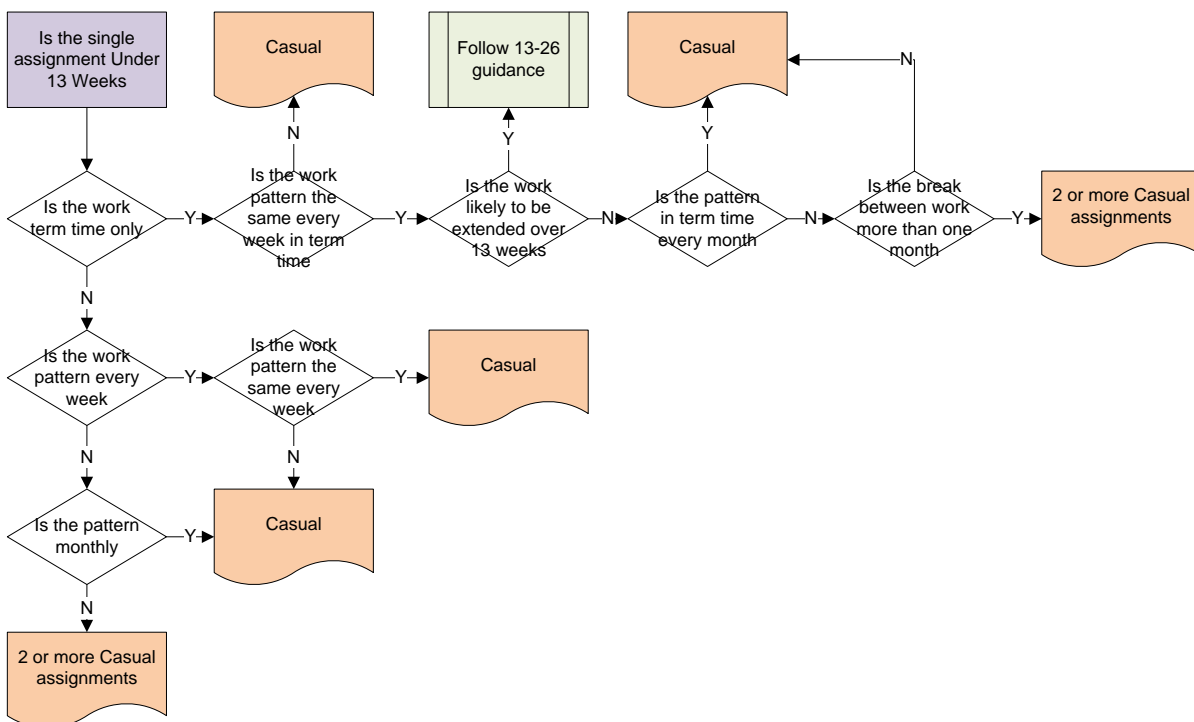
**26-39 Weeks**



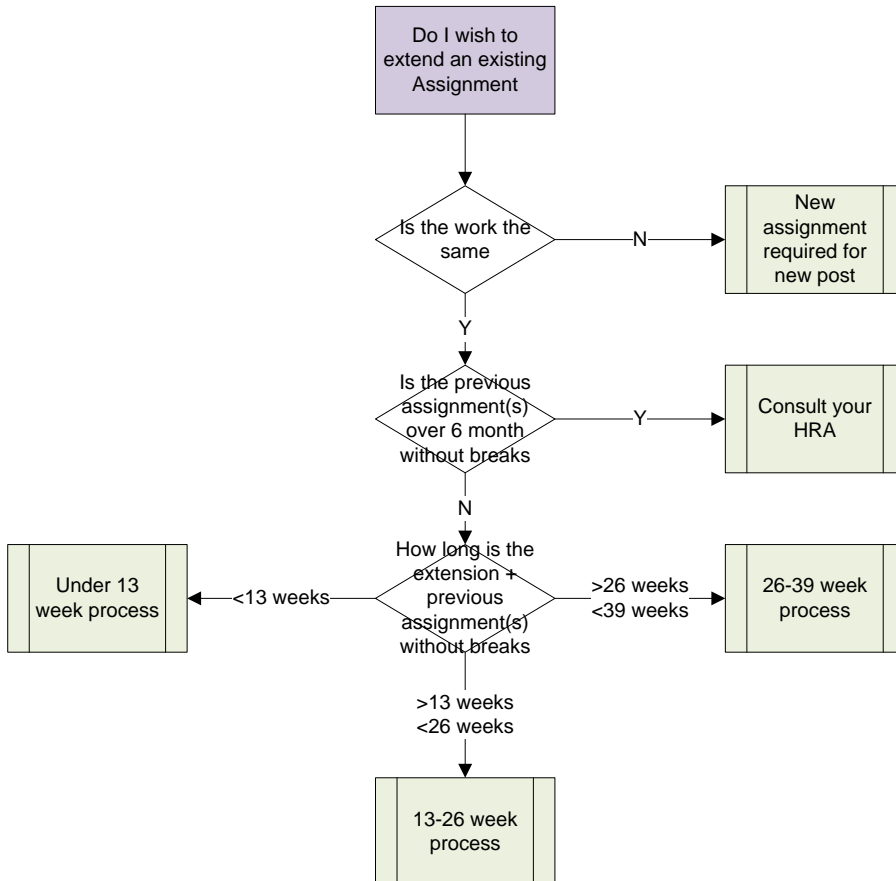
### 13-26 Weeks



### Under 13 Weeks



### Extension Requests



### Additional hours for an existing member of staff

