

Contractor doctor: can contractors take holidays when they want to?

Dear Contractor Doctor,

The client I'm contracting for had stated that until the current project goes live none of us are allowed to take holidays. This covers the entire summer period and I had planned on going away with my family for a couple of weeks as I do every year.

Can clients legally actually force contractors to fulfil their contract every week day without taking time off? This seems odd to me, since over the years it has generally been the case that us contractors take the time off when we want.

What would you advise?

Thanks

An Experienced Contractor

Contractor Doctor says:

This seems like a simple question, but, in fact, it's a bit complicated because it involves issues like [IR35](#) and [right of substitution](#).

The first issue is: what does the contract say? Does it allow for time taken on holidays? "If not, and you are working as a contractor (outside IR35) and not as an employee (inside IR35), then you have no right to take holidays. You have agreed to provide a service for a specific period of time, and you can't just opt out of that without breaching the contract," says David Royden, a lawyer specialising in contract law with Laytons Solicitors in Manchester.

You can, of course, [terminate the contract](#) according to the terms provided for termination in it. But then you probably won't be able to go back. You'll also have one very angry client and agent to deal with. You would not be breaching the contract, but you might be causing a lot of unappreciated grief.

You may feel a bit cheated by all this, because when you signed up with the agency, the agent told you that it wouldn't be a problem. Unfortunately, the agent's quick assurance has no legal value. "This would be particularly important if time were a crucial factor in the contract, and your holiday would delay the project in any way.

But there may be another solution. You have, as a contractor (outside IR35), the [right to substitute](#) another worker to do the job. You do this at your own expense, of course, unless you want to find yourself within IR35.

You can also simply ask the client to allow you to take a holiday, and try and negotiate a solution of some kind. But if the client says no, you can't insist.

Now, if you are inside IR35, then the situation is entirely different. You may well be legally an employee, whether of the agency or of the client directly.

Determining whether or not you have the right to employee benefits is a complex area, one in which you should consult a professional advisor. There are a long series of factors that are taken into consideration, from whether you make your own decisions, to whether you show up at the client's offices at the same time every day. The best way to handle the matter is to open negotiations on the subject with the client or agency as this is a huge can of worms from a legal standpoint.

If You Are an Employee in Fact

Employees have an inalienable right to holidays, under the [Employment Rights Act of 1996](#) in the UK.

If you are an employee, and you don't get a holiday, you have the right to holiday pay. But the question then becomes: when can you take the holiday? This is always a matter of agreement with your employer,

So you may not be able to take a holiday in the summer, when you want to, but you will be able to take one at some point during the contract period.

Good luck with your contracting!

Contractor Doctor

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