

Contractor Doctor: Can my agency insist on paying me only when it has been paid?

Dear Contractor Doctor,

I've only been IT contracting for a year, working through agencies to find my contracts and trading through my own [limited company](#). I have managed to stay in contract during the whole period with what I consider to be good rates and contract terms.

The latest new contract I have been offered has come with what, having read your advice on ContractorCalculator, seems an unusual and surprising clause: it says the agency will only pay me when they have been paid by the client.

Can my agency insist on paying me only when it's been paid, even if I have a signed timesheet from the client?

Thanks

Joanna

Contractor Doctor says:

Ultimately yes, they can. The arrangement between a contractor limited company and an agency is a business-to-business transaction and not an employment relationship. So the agency can effectively put what it likes in the contract, but a contractor does not necessarily have to agree and sign it.

As Alan Rommel of specialist IT agency [Parity](#) explains: "One of the roles of an agency is to reduce the risk of a client delaying or defaulting on payment to its contractors. If a contractor comes across a clause like this, the contractor should ask their agent at the outset as there may be a perfectly good reason, or the client may even require it."

There could also be a perfectly sinister one, such as underlying cashflow issues with the agency or even the client. And this is why Rommel urges contractors to address the issue as part of their negotiation process, as in his experience, "most agencies won't hide the truth".

Check the Conduct Regulations

There are some steps to take before [signing a contract](#). Although analysis of the latest updates to the [Conduct of Employment Regulations](#) have clarified that technically limited company contractors are automatically exempt, Rommel suggests that contractors still check whether they signed up to the Conduct Regulations during their first round of agency paperwork.

"If a worker is covered by the Conduct Regulations, then the employment business that is providing their services to the end-client cannot refuse to pay the worker, even if the client has not paid the employment business, but as long as the worker has completed the assignment correctly," he explains.

However, most limited company contractors choose to opt out of the regulations as a matter of course, citing that the restrictions outweigh the benefits.

If the agency won't pay, then charge interest

A perfectly acceptable negotiating gambit, says Rommel, is for the contractor to insist on an interest clause and payment time limit in the contract. This can often show the agency that the contractor means business and that, whilst being willing to accept the agency's protection of its interests, insists on taking a position to protect their own, too.

"If there is no late payment clause, then there may be no incentive for the agent to chase money from a difficult client," explains Rommel. "But the vast majority of agencies successfully chase late payments from such clients as a matter of course."

He concludes: "Receiving a contract with a paid-when-paid clause is not in itself an issue of concern. But the next step is clear communication with the agency to clarify the reasons why and the means to mitigate such events."

Good luck with your contracting!

Contractor Doctor

“ Receiving a contract with a paid-when-paid clause is not in itself an issue of concern ”

Alan Rommel, Parity Resources

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