

Contractor doctor: can my agent force a margin increase on renewal?

Dear Contractor Doctor,

I have worked for the same company through an agency for the last year on a daily rate, on the basis of 7.5 hours per day. The client wishes to change all contracts to state an 8 - hour day, but the client has agreed I can continue to do 7.5 hours (to accommodate my childcare arrangements).

My agency will change my contract to reflect this, but the agency wants me to take a cut in my daily rate. I refused, because for the last year their contractual agreement with the client was that I worked 8 hours, despite my only working 7.5 in actual fact - something the client and agency agreed to all year. The agency also billed the agency based on an 8 hour day even though I worked 7.5.

Can the agency refuse to renew my contract? The client wants me back. And nothing will have changed for the agency as they are already charging for an 8 hour day for me under the previous contract.

Thanks,

Geraldine

Contractor Doctor says:

The short answer is: no, the agency can't oblige you to cut your rate for the renewal. The key words are: 'nothing has changed for the agency.'

Explaining the why and wherefore takes a little longer. The agency can ask anything they like when you renew a contract. But you also have the right to refuse or to set new terms. Normally, however, if the client is eager to have you back, the client isn't eager to see terms change too much.

So you are free to say to the agency: 'I'll go work direct for the client if you try and cut my rate. Or I'll find a new agency for the job.'

At this point, the agency will almost certainly point to a clause in your contract called the "[restrictive covenant](#)," which prevents you from going to work directly for the client. But, as we have explained in our [legal section](#), the agency cannot use this clause as a negotiating tool!

You would have no right to go direct if the agency did not change the conditions of your contract. Agencies wouldn't make much money if every contractor went direct right after the first contract period ended. But as you said: "nothing changed for the agency." Yet the agency is trying to up its margin just because they see a chance to do it.

The [Recruitment and Employment Confederation](#), which groups a large number of agencies, takes a dim view of this kind of behaviour. Point this out to the agency. Tell them that either they renew the contract in its previous form, or you go direct with the client (or you can find another agency to take the job over). If the agency threatens to sue, tell them to go right ahead. They don't have a ghost of a chance in court.

Good luck with your contracting!

Contractor Doctor

[Ed. Following advice from Contractor Doctor, Geraldine got her contract renewed 2 days later at the same rate. Another win for the Doctor!]

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“ Using renewals to improve margins is not acceptable by our standards ”

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