

Contractor doctor: does contracting on stand-by put me inside IR35?

Dear Contractor Doctor:

I have a contract proposal for working offshore with a particular company. The terms (due to offshore regulations) include working a rota system - weeks on then weeks off. It also includes a 'standby rate' for days which I am at home (weeks off). The rate is offered to keep me available between dates of actual offshore contracting, but I'm permitted to work for other companies during this time, and intend to.

Am I correct in assuming that acceptance of a standby rate would mean being inside IR35? Does paying a retainer mean that the client controls my work?

Yours sincerely,

Derek

Contractor Doctor says:

Stand-by Payment Isn't Relevant To IR35

Accepting a retainer which commits you to remaining available for a given period has nothing to do with [IR35](#) status. Remember that IR35 depends on you're being a 'disguised employee,' that you are acting like an employee and being told what to do instead of managing your work yourself.

A retainer payment simply means that you make yourself available. Any contractor, clearly, must be available to work on a project. Payment for availability is a simple exchange of a consideration for a fee.

Remember the Three Key Factors

IR35 status is governed by three key factors: [mutuality of obligation](#), [right of substitution](#), and [control](#). By definition, if you are working a shift and other contractors work the rest of the time, then you can be substituted for--an employee has to be physically present, himself and no other, all the time work is done. An employee also must be given work by the client while a contractor only works when needed for a specific project--you are only turning up to work on a specific project, it seems. And you are also working for other companies throughout.

On the issue of control--the stand-by payment only says when you turn up. It doesn't say anything about who makes the decisions.

What Happens In The Workplace?

But the most important of all factors that determine IR35 status is what happens in the workplace. Are you just doing whatever work comes down the pipe, or are you working on a specific project. Are you dependent on work from this client, or would you be able to stop work there easily and go elsewhere. Are you using your own equipment? Could another contractor you sent in do the job? In an [IR35 inquiry](#), these are the factors that will be taken most seriously into account. A retainer payment is a side issue.

Good luck with your contracting!

Contractor Doctor

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