

What contractors need to know about IR35 compliant contracts

What contractors need to understand about **IR35** compliant contracts is that there really aren't any.

Explains David Royden, a lawyer specialising in contract law with Layton's Solicitors in Manchester: "In itself, a contract can never assure IR35 compliance, because the contract is not the only factor considered when deciding if a contractor is inside or outside IR35. Judges will look at your relationship with the client and the agency, your own company, and a number of other factors. Words on paper do not ever protect you all by themselves."

Make The Contract As Good As It Can Be

So just having a contract with the right words in it won't ever make you IR35 compliant. "But it is obvious that the contract will be an important consideration for judges, and so it is worth getting it as clearly outside IR35 as you can," Royden continues.

You Control Your Work

Control of your own work remains a prime consideration in determining whether or not you are within IR35.

"You clearly choose the work that you do on the basis that you might refuse other work from the same client. You have agreed to provide a specific service to the client. It should be clear from the contract that most decisions about how that service is to be provided are left up to you, assuming they do not affect the final deliverable. You decide what hours you work; you choose who else from your company can do the job; you provide your own equipment," Royden explains.

“Words on paper do not ever protect you from IR35 all by themselves”

David Royden-Laytons Solicitors

No Standard Contracts

Another point that is important is that the contract you use be one custom-made for your work with this particular client or agent. "If the contract is just one that the agent uses all the time, some sort of standard 'IR35 compliant form,' it won't cut much mustard," Royden insists.

"The judge will expect to see that both you and the client made a special effort to come to a specific agreement for this particular project. You might well make a different one for a different project, or you might use a similar one, but the contract reflects both of your specific intentions," Royden explains.

If you produce a standard contract from an agent, you won't get far. "The judge will simply say that the contract may or may not reflect your real working relationship with the client. The judge will then insist on proof of what you are really doing with the client on this project, and look at what actually happens," Royden says.

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Financial Realities

The question of your own financial position will unquestionably arise if you are obliged to contest IR35 status under a given contract. "Employees are protected from any exposure to financial loss, whatever involvement they may have in a given project," Royden continues.

"An employee collects salary regardless of the financial gains or losses that the employer may suffer (unless the employer suffers so much that the employee gets made redundant). This is not the case for a contractor, who may find a project abbreviated or terminated before completion, and who then may not collect the full fee. Exposure of this kind is a key factor in determining IR35 status, and it should be clear in any contract that you sign," Royden says. "If you appear to have employee protection, the judge may consider you one."

Contractors Are Independent

The general principle is simple: show that you are an independent contractor, **running your own company** in your own way, and you will be outside IR35. A contract that reflects this status will help you, but you have to do the work of staying outside IR35 yourself.

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