

Contractor doctor: why can't I use the company canteen?

Dear Contractor Doctor,

My client has banned contractors from using their canteen. They had a recent problem with a long-term contractor (14 years) who claimed to be an employee after not being renewed, and they had to pay out an undisclosed sum in settlement.

Now they are worried about other contractors being considered employees, so we all have to wear contractor badges and are no longer allowed to use the canteen. This is a shame, because the grub is excellent and much cheaper than take away food in the area.

I've read about one of the IR35 tests being "Part and Parcel of the Organisation," but being banned from the canteen seems silly. What's your view on this?

Thanks,

Dave

Contractor Doctor says:

Believe it or not, even small things like using the canteen, or having a badge that allows you access without signing in can be important in determining whether a contractor be a "disguised employee" or not under [IR35](#).

"The [case law governing IR35](#)-- meaning that which determines whether a contractor is a 'disguised employee' for tax purposes, includes a test called 'being part and parcel' of an organisation," as the Felixstowe-based tax consultant [Simon Sweetman](#) points out.

There are no clear criteria about what being 'part and parcel' means, and the case law on the subject varies greatly. So every little detail involved can be taken into account. In one case, a contractor was accused of being within IR35 because the contractor had the same security pass that employees had and so could walk in and out of the building at will.

Other cases have included factors like eating at the company canteen, or sharing employee transport--almost anything you do that makes you seem like an employee can be held against you largely because the case law varies so much. Judges look at everything.

You should bear in mind that the Revenue will come back to you as much as six years later and accuse you of having been within IR35. So you should actually be grateful to distinguish yourself as much as possible from the permanent employees, and make sure that both your contract as well as your actual day-to-day activities show that you are an independent contractor and not a disguised employee.

There is one other aspect to consider: if you feel you really are inside IR35, then don't wait too long to demand employee rights from your client with the [Employment Appeals Tribunal](#). (Don't forget to send a "[Letter Before Action](#)" to your client first). You can do this without a lawyer, and online, although due to the complexity of the legal issues involved, you will probably want to at least consult a solicitor if the EAT agrees to hear your case.

Remember, you have only three months from the end of your contract to make such an appeal, while you could get accused of being within IR35 up to six years later. So you should make a decision as soon as possible.

Good luck with your contracting!

Contractor Doctor

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