

How contractors should word contracts to keep outside IR35

With the Revenue scrutinising contractor contracts carefully for any signs of [IR35](#), and or [managed service company](#) wording, it is wise for contractors to pay attention to how their contracts are worded. This of course applies to contractors in [limited companies](#) of their own; contractors with [PAYE Umbrella](#) arrangements may work out what terms they like with their providers.

"The use of certain terms in your contracts will make them seem like employment contracts, and will look suspicious to the Revenue," says David Royden, a lawyer specialising in contract law with [Layton's Solicitors](#) in Manchester. "If you wish to include these terms, you should qualify them carefully with the help of a professional to ensure that you are clearly maintaining your contractor status."

Contract for Services

"Cosmetically, it is a good idea to format a contractor's agreement in a very different style to an employment agreement," Royden continues. "Some companies merely adapt an existing contract of employment to a contractor's agreement, and this is not a good idea. Better use a different template. For example, rather than specify 'job title and responsibilities' as you would in an employment contract, it is far better to specify that the contractor will perform 'the services' and define 'the services' in a separate schedule attached to the agreement."

The contract should be between the client/agency and the contractor's limited company and under no circumstances mention a named individual. The schedule should describe the work to be done, preferably referencing a project by name, and the skills/services supplied.

Intention of the Parties

"Most importantly, the contractor's agreement should specify the intentions of the parties i.e. that contractors are self-employed, responsible for their own tax and national insurance and (usually) agrees to indemnify the Company in respect of the same," Royden points out.

“ Cosmetically it is a good idea to format a contractor agreement in a very different style to an employment agreement ”

David Royden-Laytons Solicitors

Contractor Engagements Should Be Fixed

This is one of the key tests for employment status, as Royden points out, and so it is very important that your contract be for a fixed term, and ideally not renewable. "If you have a 2-year contract with one client, and it is renewable for 2 years, the Revenue is going to ask some questions, particularly if you have few or no other clients." Arrange to renew your contracts after they run out if possible, and make informal arrangements concerning them.

Contractors Should Work Their Own Hours

A contractor should display clearly in the contract that there is no '[mutuality of obligation](#)' between the contractor and the client. This would be taken as a sign of employment status, Royden points out. In fact, it is one of the key tests for employment status used by the courts, as the relevant case law shows.

Contractors should therefore be careful to show in the contract that they are able to set their own hours of work. If they work on the client's premises, they should make it clear in the contract that at least part of the work may be performed in their own offices.

Contractors Pay Their Own Expenses

Some clients are prepared to pay certain [contractor expenses](#). This can be dangerous, as it can be seen as a sign of employability. "Contractors should include expenses as part of their rate, or indicate that certain exceptional expenses will be covered," Royden points out.

Contractors Don't Get To Take Holidays

Contractors should not expect clients to pay for [holidays](#), nor should contractors expect to take them. "What a contractor should do is to fix the contract periods with gaps in them so that there are breaks in between," Royden explains. Receipt of holiday pay is almost a sure sign of employment status and should not be accepted under any circumstances.

Contractors Do Not Receive Sick Pay

The same rules apply to sick pay as those previously explained for holiday payments. This does not mean that you cannot get sick, only that you should not expect to be paid for the time you are out. You should ideally substitute for yourself if you get sick—we will come back to this later.

Contractors Supply Their Own Equipment

This may be difficult for contractors to arrange in practice, but the contract should at least state that contractors are responsible for the supply of their own equipment. You may well find yourself working with the client's equipment, but at least you have undertaken to supply your own.

Contractors Should Find Their Own Substitutes

One of the key tests of employment status is whether you must provide the services yourself—as an employee would—or whether a substitute can provide them. As Royden points out, every contractor should be certain to find substitutes as opposed to working in own person, and to provide them if necessary.

“ A key test for employment is right of substitution ”
David Royden-Laytons Solicitors

The courts have repeatedly looked to the [right of substitution](#) as a proof of employment or of contractor status. It's not a guarantee in itself that contractor status will be accepted, but it is a strong indication, Royden says.

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