

How contractors should prove being outside IR35

Contractors should arrange to obtain and to keep certain documents to prove, as best as one can, that they are outside [IR35](#).

Should the Revenue conduct a [tax inspection](#) and dispute your status, you will be faced with your local tax inspector who will look at your evidence, and then eventually with the Special Commissioners if you appeal. They will need convincing with as much proof as possible of what actually took place between you and the agency, and between you and the client.

We say, 'prove as best as one can,' because there is no absolute proof, as the IR35 concept is relative.

Employees Versus Contractors

How do you prove that you're a contractor, not an employee? In some ways, one is very like the other. But the law stipulates ways in which they are different. To understand how to prove status, one needs to understand the legal concepts involved.

Says [David Royden](#), a lawyer specialising in contract law with Laytons Solicitors in Manchester: "An employee is someone who goes to work at the same offices of the same firm every business day, and who performs a whole range of tasks covered by the job description at the employer's discretion.

A contractor is someone who provides a specific service--the more specific the better--for a given fee. The employer does what the boss says. Contractors make their own decisions, run their own companies, work wherever is necessary--but not necessarily at the offices of the company--on their own time, at their own expense, and may send someone else to do the work at their own expense."

On this basis, proof of being a contractor naturally resides in showing that you acted during the contract period in the ways Royden describes.

The best proof of all, Royden points out, is to have your contract confirm your status as a contractor. So if your contract specifically states that you have the right to perform the work at any location you choose, at the hours you choose, to have someone else do it at your own expense, and that you are responsible for your own [expenses](#), then you probably don't need much more.

“ Contractors make their own decisions and work on their own time at their own expense ”

David Royden-Laytons Solicitors

"Unfortunately, contractor contracts rarely read like this," Royden continues. "In general, you are asked to work at the offices of the client, and the other terms about [substitution](#), expenses, etc. are often left out." Some of this may appear in the advertisement for the job, whether on the agent's web site or in the newspaper or job web site where you found it. That may help, but it's not always specific enough.

Bring Your Own Equipment

You may have some proof in your letter of engagement. Again this may not be specific enough, but it may help.

If you can't get these terms into the contract--and many agents are ignorant of them and afraid to put them in--you have to find other means of proof. One of the most powerful of these is a [confirmation of arrangements letter](#)--a list of these terms that you obtain from the client.

But apart from that, bring some of your own equipment and get some proof that it is used in the project, Royden suggests. Send emails showing that you are using it.

Work At Home

Get your project manager to let you do some of the work at home, and see that the email record shows this is taking place. Or simply get a note saying you can work at home.

The [right of substitution](#) is a very important proof of being outside IR35. Send the client or the agent emails about this. If you get a reply, that may prove extremely useful. Any other proof of that kind, like letters or notes from agent or client would help too.

Keep All the Proof

Obviously keep any proof you can get that you've paid your own expenses. Not just receipts, but also any requests for materials needed from the client, any email asking you to pay expenses, etc.

If the contract is a long one, you may be advised by agents or other contractors to get a lawyer to [review your contract](#) to advise that it is outside IR35. Royden points out that this in itself will not carry much weight, unless the lawyer has met with the client and the agent and is involved in the deal. "The Revenue will demand evidence of what actually took place during the contract's term; unless the lawyer has access to that, they are merely submitting a point of view, and a paid one at that."

“ Get a note saying that you can work at home ”

David Royden-Laytons Solicitors

So do make an effort to get as much proof as you can. Remember the Revenue will go back six years if it decides to review your status, so you will need to save everything relevant for that time. Make sure that you get proof while the project is taking place, so you won't have to struggle to obtain it six years later.

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