

## Starting contracting without a signed contract

[Contract negotiations](#) that drag on towards the start date can place contractors in a difficult position, particularly if the issue is between the contractor and agency, leaving the client expecting the contractor on site on day one.

The pressure on contractors to start work before contract negotiations have been concluded and a [contract signed](#) can be intense. But according to [Roger Sinclair](#) of contractor specialist law firm Egos, starting work without a signed contract is never a wise thing to do.

"If a contractor starts working on site for their end-user client before the contract is signed," explains Sinclair, "they place themselves at a commercial disadvantage."

### Why have a contract?

"The point of a contract is to make a record of the terms agreed at the outset," continues Sinclair. "The contract acts as a point of reference for all parties and, with a clear signed agreement in place, scope for subsequent difference of opinion is much reduced."

Sinclair says a signed contract is also a form of insurance for the contractor, agent and client, to which each party can turn in the event of a dispute: "Very often the existence of the contract actually prevents disputes."

Where a contract has not been agreed and signed, common areas of dispute can include such fundamental issues as rates, whether [VAT](#) is included in the rate, payments dates and payment periods.

Having a signed agreement also clarifies the expectations the client has of the contract, such as the role and responsibilities of the contractor, and what they are actually expected to achieve.

### No signed contract - what does this mean for IR35?

In [IR35](#) disputes, despite the tendency of the courts and tax inspectors from HMRC to focus on the notional contract (the actual working relationship between client and contractor), the contract itself is very important should a contractor need to defend their IR35 position.

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Roger Sinclair. Egos

"Where, for example, the contracting position shows a job title in the contract (as opposed to a specification of the services to be provided), it is a significant pointer towards the contract in question falling inside of IR35," says Sinclair, "and the contractor must expect to be taxed accordingly."

Sinclair also suggests that contracts are convenient places to spell out IR35-relevant provisions, such as the IR35 'big three': [substitution](#), [direction and control](#), plus [mutuality of obligation](#).

### Contract sent but not signed

In many cases, their agent has actually sent the contractor a copy of the contract, but they do not sign it because they are unhappy with some of the clauses. But the contractors then start work on the contracting project, without telling the agency exactly what they find unacceptable.

Sinclair warns contractors that this is a very bad mistake: "In these circumstances, starting work could very well amount to a sufficient act of acceptance of the contract. The time to argue and negotiate is before the contractor starts working on the contract."

Even if the contractor assumes that negotiations are still ongoing, they are in a significantly weaker negotiating position having started work. If the contractor decided to stop work on the contract because of inability to reach agreement on the contract, whether they are in breach or will get paid depends on the individual circumstances.

### Contract, what contract?

According to Sinclair, instances where contractors begin working on a new contracting project without having even drafted a contract, much less agreed and signed one, are surprisingly common.

"If the contractor has orally agreed the day rate, contract duration, termination conditions, project requirements and so on, then it is possible to start work, but highly unsatisfactory," says Sinclair. "What happens if a situation arises that has not been agreed orally, or if a disagreement arises about what exactly has been agreed?"

Sinclair's advice to contractors is to resist the pressures and temptation to start contracting without a signed contract, and concludes: "Don't leave home without it!"

**Published: Wednesday, January 28, 2009**

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