

What is a disguised employee?

Contractors using a [limited company](#) to trade would be 'disguised employees' if they pass the tests of employment and if, were it not for their limited company intermediary, they would otherwise be employed by their client.

In 2000 the UK government introduced tax legislation called [IR35](#) that, when applied by HM Revenue and Customs (HMRC), is designed to identify disguised employees and tax them accordingly, as if they were employees.

IR35 is tax legislation to catch disguised employees

IR35 uses [tests of employment](#) to assess people's working practices. Applying precedents from [past tribunal and court rulings](#), where a worker's employment status was being contested, the tests decide whether the worker is genuinely [in business on their own account](#) or a disguised employee.

IR35 is applied on a contract by contract basis. So, for example, a contractor might be classified as caught by IR35 and a disguised employee on one six-month contract with one client, but not on a subsequent 12-month contract with another client. Contractors can even found to be both inside and outside IR35 on a single contract, if their working practices change part-way through.

If a contractor passes the tests of employment, is deemed to be inside IR35 for a contract and is determined by HMRC to be a disguised employee, then the contractor has to pay income tax and National Insurance Contributions (NICs) as if their contracting fee income were employment income.

The tests of employment

There are three main tests of employment to determine whether a contractor is a disguised employee and not genuinely in business on their own account. These are:

Control: if a contractor is told by their client where, when and how to complete the tasks allocated on their contract, they have passed the control test

Substitution: if a contractor cannot send a replacement, or a substitute, to complete the tasks for the client on their behalf, they have passed the substitution test

Mutuality of obligation (MOO): if a contractor expects the client to give them work, and the client expects the contractor to complete it, they have passed the MOO test.

Although the above three are the main tests, there are numerous other factors that can point to whether a contractor is a disguised employee, and would be taken into consideration by HMRC and a tribunal or court when determining a contractor's employment status.

Disguised employees are not genuine contractors in business on their own account, and are often called '[permtractors](#)', 'tail-end charlies' or the 'Friday-to-Monday mob' because they behave exactly like employees, except that they get paid via a limited company.

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