

## Inflexible clients driving contractors into IR35?

Nearly half (45.2 percent) of those asked in a survey by [theitjobboard.com](http://theitjobboard.com) believe that the IT sector is not geared towards flexible working. And, as key **IR35** factors such as **control, part and parcel** and **right of substitution** can **determine IR35 status**, it seems likely that the inflexibility of some IT clients is not only driving contractors into IR35, but may also be driving them out of contracting altogether.

The survey run by [theitjobboard.com](http://theitjobboard.com) – a leading source of IT contracts and jobs – also reveals that IT workers rated flexible working as second only to salary on the list of criteria when seeking new contracts. But, where clients have allowed flexible working, 22.6 percent of survey respondents say the constraints placed on them are so off-putting they want to go back to non-flexible working.

### IR35 indicators – control, part and parcel and substitution

If, as the survey suggests, a large number of IT clients insist on their developers being sat in the office, at their desks from nine to five, five days a week, it would indicate what HMRC would judge to be a high degree of control by the client.

Contractors who are focused on project deliverables, rather than time served, should only need to spend time working on-site when they require access to their client's systems. However, if contractors can only access vital data for their work during office hours due to health and safety and security rules, then this might not indicate control by the client.

Another IR35 factor is also likely to come into play for '9-to-5 contractors' because, should a contractor be considered by the taxman as 'part and parcel' of a firm, then this suggests the notional contract is one of service; they are effectively an employee and within IR35.

Being part and parcel means contractors at their desk during standard office hours alongside client employees, listed on internal phone directories and using employee facilities like the staff restaurant and sports club.

One of the ultimate tests of IR35 is whether the client can accept a substitute from the contractor. Ideally a contractor would have tested this ability by supplying a substitute at their own expense during a period of absence, for example jury service. It is important that the contract between the client and contractor should have a substitution clause.

### Desperate skills shortage

Commenting on the results of the survey, [www.theitjobboard.co.uk](http://www.theitjobboard.co.uk) managing director Alex Farrell says: "With the current skills shortage in the technology industry, employers need to act now to encourage and retain talent in their IT departments."

European Commission (EC) figures on skills shortages in the IT sector should be a cause for grave concern to the public and private sectors. By 2010, says the EC, 300,000 IT positions will be vacant. So it is clear that contracting will fulfil a vital role in enabling clients to manage the forecast shortage of skilled IT workers.

### Time for change

It seems ironic that the very enabler of flexible working, the IT sector, appears so intractable over the issue, especially when skills shortages are already acute.

Farrell says: "The option to work flexible hours is clearly high on the agenda of IT professionals." It therefore seems probable that clients who make it easy for contractors to work flexibly and stay out of IR35 are likely to be able to attract the talent they need to remain profitable and competitive.

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