

Contractor Doctor: Can my client force me to work fewer hours than my contract says?

Dear Contractor Doctor,

I am an IT contractor and have my own contracting limited company. I am currently in a contract with an end-user client, via an agency.

My end-user client has recently informed me that I have to take 20 days holiday a year.

Is this legal and can my client force me to take time off?

Thanks

Rowan

Contractor Doctor says:

Strictly speaking, no contractor can technically be asked to take 'holiday' by an end-user client, as the client does not employ the contractor, and instead has a [contract for services](#) with the contractor's [limited company](#) or [umbrella company](#).

However, contractors do get asked by clients to take breaks from contracts. And, according to [Roger Sinclair](#) of contractor specialist law firm [Egos](#), whether this is a breach of contract is down to what was agreed during the contract negotiations and what appears in the small print.

"There are generally two possibilities for contractors in this situation," explains Sinclair. "Their contract may be quite explicit and state that (say) the contractor works 8 hours per day, 5 days per week for a contract lasting 3 months.

"Alternatively, the contractor may have a less prescriptive contract, with little more than start date, end date and an hourly or daily rate. The contractor's options will depend on which of these two possibilities applies to them."

Hours, days and weeks specified

If the contractor has a contract that clearly states the:

Start date and end date

The rate by hour

Hours to be worked per day

Days to be worked every week,

Then it is likely that not only will the contractor be under the obligations to work for the periods specified, but also the client will have a corresponding contractual obligation to provide work for the contractor for the periods specified, and to pay the contractor for that work.

"Assuming the contractor makes him/herself available and willing to work by turning up at the client's site every day," continues Sinclair, "then the contractor is not in breach of contract, but if the client fails to provide work then the client is in breach of contract."

Or, as Sinclair points out, if there is an agency in the loop, then it would be the agency that is in breach of contract as they have the contractual relationship with the contractor's limited company or umbrella company, and therefore an implied obligation to make work available for the period – and to pay in any event.

Beware of IR35

"Although having a contract that requires the agency or client to continue providing work without enforced breaks could seem advantageous to the contractor," warns Sinclair, "this scenario is unhelpful for a limited company contractor's [IR35 status](#), because of the implied mutuality of obligation."

[Mutuality of obligation](#), often shortened to MOO, is a principle generally associated with employment relationships, under which an employer is obliged to provide work and an employee is obliged to take it. It is one of the factors that can indicate a possible employment relationship between a client and contractor, potentially pushing a limited company contractor further towards becoming inside of IR35.

Less prescriptive contracts

Where the contractor has a contract start date, end date, a rate and a payment date, but no specified hours or days to be worked, then there is no specific obligation to the contractor to work on any particular day, and no corresponding obligation on the client to provide work on any particular day. It has become common practice for IR35-friendly contracts to expressly say this.

According to Sinclair, this scenario is more IR35 friendly, but leaves the contractor few options: "If the client asks the contractor not to provide their services for a period of time during the contract, then even though they may be willing to work, the client is not obliged to provide work or pay for it."

There is also no mutuality of obligation in that situation and the client is fully within their rights to ask the contractor to take a 'holiday'. The same is true if an agency is in the contract chain – the agency does not have an obligation to provide work either.

Contractual 'holidays'

"For longer term contracts, we have begun to see clients expressly requiring in the contract from the outset that a contractor does not work for a certain number of days during the contract period," says Sinclair, "generally for budgetary reasons."

Contractors should add 'forced holidays', or periods where the client does not want to pay them during a contract, to their negotiation checklist. They should also ensure that if a break is written into the contract, they are happy with this and have made appropriate financial provision.

Taking action over breach of contract

It is a judgement call as to whether the contractor should take legal action over a client forcing them to take time off. Many factors should be considered, including the loss of earnings for a fortnight versus loss of the contract entirely, especially if the contract has a long time to run.

"The contractor should first put their agent in the picture," concludes Sinclair, "as the breach of contract will be with the agency and not the client. It is possible that a compromise could be reached, especially if the contract is lengthy."

Good luck with your contracting!

Contractor Doctor

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