

## Contractor Doctor: Should a self-employed contractor get holiday pay?

Dear Contractor Doctor,

I have been working as a self-employed contractor with a verbal agreement for six months, being paid gross monthly, so that my client avoids paying National Insurance Contributions (NICs). My client has just let me go with no pay-off or notice period.

I've read on the internet that I should be entitled to statutory holiday pay for the period worked, but none has been forthcoming.

As a self-employed contractor, should I get holiday pay?

Thanks

Sandy

Contractor Doctor says:

Contractors engage in a business-to-business transaction with their clients and are not employees. That applies whether contractors are self-employed **sole traders**, in a partnership or **limited liability partnership** (LLP), using a **contractor limited company**, an umbrella company or another trading solution, such as an offshore option.

Therefore, as contractors are not employees, they do not qualify for **employment rights and benefits**, such as holiday pay. The exception is umbrella company contractors – they are classed as employees of the umbrella company (not the client), and so **should receive holiday pay** from the umbrella.

### Commercial contract law

Contractors are not protected by employment law, but by commercial contract law, so the wording in any contracts must be respected by clients. If clients **breach the contract**, for example by **terminating a contractor with no notice period** when the contract specifies 30 days, then the contractor would have grounds for action and could take the client to court.

Technically, a **verbal contract**, such as that entered into by this contractor, has the same standing in law as a written contract. However, the problem with verbal contracts is that they are difficult to enforce and often are reduced to 'my word against yours' arguments. The old adage, 'a verbal contract is not worth the paper it's not written on', is what applies in reality.

Contractors should never start work without a signed contract.

### Sue for employment rights

If the ultimate intention was to enter into an employment arrangement with a client, then it might be possible for a contractor to bring a case before an **Employment Tribunal**. They would need to prove that their client was actually supposed to be their employer, and that this was the intention all along. Most contractors spend their careers trying to prove the opposite!

In most cases, any claim for employment rights must be made within three months of the contract termination date, or, where the contractor believes they were in an employment situation, the end of employment date.

Although claimants do not have to be represented by a lawyer at a tribunal, as employment law is highly complex and employment status hearings particularly so, then specialist professional legal assistance is strongly recommended. A high street family lawyer is unlikely to have the right skills and experience to represent someone at an Employment Tribunal.

### IR35 and HMRC

Contractors should also remember that if they have been **contracting outside of IR35** and not paying tax and NICs as if they were an employee when working for the client they are trying to prove was actually their employer, then they will almost certainly attract the unwelcome attentions of **HMRC**.

If the contractor subsequently proves they were in fact employed by their client, then they will have done HMRC's work for them, and HMRC will come after the contractor for any back taxes, NICs, interest and possibly penalties.

These additional payments to HMRC could be considerably greater than any cash benefit a contractor hopes to gain from their client as a result of employment status, so careful consideration should be given before embarking on a fight for employment status.

## Self-funded rights

Because contractors are not employed by their clients, they should expect none of the benefits that are associated with employment, such as holiday pay, maternity and paternity benefits, sick pay, plus non-statutory perks such as private health, pensions and so on.

The extra money contractors earn because of their contracting status and, in the case of limited company contractors, the tax efficiencies, mean that they can afford to pay for these benefits out of their limited company and their own pockets.

Umbrella contractors should not expect employment rights and benefits from their clients, but they should expect employment rights and benefits from their umbrella company. These include minimum wage, statutory holiday pay, and paternity and maternity benefits.

Good luck with your contracting!

Contractor Doctor

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