

Contractor umbrella companies and their contractors' employment rights

Contractors have traditionally resisted all attempts to turn them into employees. And **limited company contractors**, whether inside or outside of **IR35**, have no employment rights with their client – the infamous test case **James versus Greenwich** has enshrined this in **case law**.

But the situation for contractors working through **umbrella companies** is less clear cut. According to Derek Kelly of contractor umbrella company **Parasol**, whilst contractors working through an umbrella have no employment rights with their client, they may have rights with their umbrella.

"Any umbrella company that genuinely employs its contractors will provide the full range of employment rights," explains Kelly, "which include everything a permanent employee would expect to receive."

Which umbrella company model?

However, there are, says Kelly, various shades of grey in the contractor umbrella marketplace and all umbrellas may not be what they seem: "Historically, the agency PAYE [Pay As You Earn] payroll model treats the worker as an employee for tax purposes, so their income tax and National Insurance Contributions are deducted at source, but they are not employed by the agency.

"This scenario, typically involving workers with more general skill sets working for a staffing agency, is often where claims are made against end-user clients for employment rights."

Other payment scheme companies that often market themselves as umbrella companies actually offer contractors an offshore payment solution, for example through an employee benefit trust (EBT).

Contractors do not get employment rights with either offshore schemes or agency PAYE providers, and many providers aggressively market their ability to save contractors tax by pushing the boundaries of expenses claims, which can attract unwelcome attention from HMRC.

Kelly explains: "Umbrella companies such as Parasol that offer a 'pure' employment model for their contractors provide all the employee benefits required by statute and are generally members of trade bodies that apply rigorous compliance tests for membership."

Umbrella employee benefits

More experienced contractors have probably forgotten the benefits they used to enjoy when in full time permanent employment, but of course this is outweighed by the additional earnings potential and flexible working and lifestyle opportunities.

The statutory benefits offered by umbrella companies who genuinely employ their contractors include:

Statutory sick pay

Holiday pay

Maternity and paternity benefits

Minimum wage/guaranteed minimum hours

Redundancy payments.

"Different umbrella companies will vary in how they fulfil their obligations to provide employment rights for their contractors," says Kelly. "For example, we pay contractors' holiday pay on an ongoing basis, whereas some umbrellas withhold holiday pay, collect interest on the balance and may forget to pay the contractor when they leave the business."

Infrastructure

Kelly emphasises that without efficient and experienced finance, payroll and human resources teams in place, as you would find with a regular large employer, the umbrella company would not be able to fulfil its obligation to its contractor employees.

And the 'regular employer' infrastructure brings added benefits, as Kelly points out: "Contractors who require a mortgage reference have a real employer to provide a reference, and an HR department that can process the reference request."

Less positive, but no less necessary, umbrella companies with good HR support also operate employee grievance and disciplinary procedures, should there be issues with a contractor's performance when working for the client.

'Cradle to grave'

"A good umbrella company will apply high standards when a contractor joins," explains Kelly, "ensuring the process is smooth and hassle-free, but also undertaking due diligence on the contractor to ensure they have not left a trail of blown expenses limits and unpaid tax bills behind them."

As their length of service increases with an umbrella company, contractors may become eligible for increased minimum payments when they are not in a contract and statutory redundancy pay. In return, however, they typically have to take on some of the responsibilities of being an employee in return for those benefits.

For example, Kelly explains that Parasol has a sliding scale of notice periods, which depend on length of service: "If a contractor has been with us for between a month and two years, we have to give two week's notice. More than two years and the notice period is a month."

Umbrella companies fill a niche, providing support, stability and benefits that limited company contracting does not, yet giving contractors more flexibility and higher earnings than a full time permanent job.

"And, of course, when contracting through an umbrella company," concludes Kelly, "contractors don't have to worry about the daily grind of the next promotion and office politics."

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