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Contractor Doctor: I'm 3 weeks into a new contract with no pay – what should I do?

Dear Contractor Doctor,

I have recently been awarded a contract with a German client for work based in the UK. In order to accommodate payment in Euros, I have switched umbrella company and, as a result, have not yet signed the contract.

Although I have been working at the client's UK site for three weeks now, the agency has not sent me time sheets and I have not been paid.

I would like to switch agencies as I feel they are not keeping their side of the bargain; is this possible and are they in breach of contract? What are my rights in this situation?

Thanks

John

Contractor Doctor says:

A contractor's rights are determined by the clauses in the contract, as contractors have a business-to-business arrangement with their agency, or the client if **contracting direct**. Contractors do not have any employment rights, as they are not employees.

If contractors start working on a new contract, and the **paperwork has not been signed**, the fact that the contractor has started work confirms their acceptance of the contract and its terms. So ideally contractors should never start work without having a signed contract.

Changing agents is probably not an option, but see below, as there will almost certainly be a **restrictive covenant** in the contract that would prevent a contractor working for the client direct or through another agency.

Breach of contract

Late payment need not necessarily be a breach of contract, and a contractor should ensure the contract states that being paid on time is 'of the essence of the contract'. A standard agency contract is unlikely to include a clause of this type.

Several steps are required before the contractor should take legal action, such as **debt recovery proceedings**, which include writing to the agent warning them that if they continue to pay late, or not at all, they are in breach of contract.

In addition, if the contract specifically states that the agency has to provide timesheets, and they clearly have not, then there is additional scope for them to be in breach of contract.

Restrictive covenant

Most agency contracts include a restrictive covenant that means the contractor cannot work directly for the client, or work for the client via another agency; they can only work for that specific client via the original agency that introduced them.

However, if the agency is deemed to be in breach of contract due to late payment (having been properly warned in writing by the contractor) or by failing to provide timesheets, then the restrictive covenant will not apply and it might be possible to change agency.

Before getting to the letter-writing stage, it is generally advisable to talk to the agency and the end-user client expressing dissatisfaction with the situation. Quite often, faced with losing a key contractor on a vital project, the client can put pressure on the agent to find a solution.

Should the softly-softly approach fail, then it is well worth the contractor paying for legal advice. Clearly this entails costs, but the chances of getting paid can be significantly increased when the agency knows the contractor means business and won't just roll over.

> " Faced with losing a key contractor on a vital project, the client can put pressure on the agent to find a solution "

Act fast

It is very important to resolve non-payment issues early into a new contract, as the contractor could end up not getting paid at all. It's not unknown, especially in tough trading conditions, for an agency and client to use unethical tricks to get contractors to work for free for a month or so, and then get the **contractor terminated** on some spurious charge of non-performance.

Good luck with your contracting!

Contractor Doctor

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