

## How contractors should handle ongoing contracts

Contractors are sometimes—the situation is relatively rare—asked to enter into ongoing contracts. These are contracts which include a clause stating that unless the client/agency is notified of termination within a certain period, the contract will remain in force under the same terms for a given period.

### The Contract Continues Unless You Terminate

This means that if you have contracted for six months of work, you'll go on to do another six months of the same work unless you tell the client/agency that you don't want to continue—usually a month or two months before the end of the contract period.

This may sound almost like an employment contract, but it isn't one. Says David Royden, a lawyer specialising in contract law with Laytons Solicitors in Manchester: "Contractors do not have to fear winding up inside [IR35](#) just because they have an ongoing contract."

"As far as the courts are concerned, the tests for an employment relationship, as opposed to that of contractor-contractee is based on entirely different factors."

### Tests For Employment Don't Include the 'Ongoing' Clause

Royden continues: "Are you obliged to accept whatever work the client gives you, or is this a specific contract for a specific purpose? Can someone else from your company do the job if you don't turn up? Can you refuse assignments? Do you supply your own equipment? All of these are the factors the courts will consider whether or not you have an ongoing contract," Royden explains.

### A Caveat

But there is a caveat. "If you have an ongoing contract with a single client that lasts for five years, and you work for no other clients during that period, you are likely to attract some scrutiny from the Revenue about whether or not this is disguised employment," Royden points out.

"Nonetheless, you should not hesitate to accept such a contract. You should simply ensure that all the other factors we have mentioned are correctly in place. Be prepared to show that you are not acting like an employee, and the courts will accept your status."

It is nonetheless wise, in the interest of avoiding unwelcome trouble with the Revenue, to try to limit the time period for ongoing contracts to less than two years. Suggest to the client that you are prepared to continue the work for a longer period, but that you will want to review the terms of the contract after the two years are up. Also, bear in mind that claiming some expenses after 24 months is no longer possible due to the [24 month expense rule](#).

You may also offer the client a long notice period for early termination of the contract to ensure that the client will not risk having to replace you too quickly.

### You Can't Renegotiate

Contractors should be aware of another problem with ongoing contracts. Agreeing to an ongoing rate doesn't give the contractor much scope for [negotiating a contract renewal](#), which the contractor would have in a shorter fixed length contract which could be changed if the work continued. With an ongoing contract, you would always have to threaten to terminate it if you wanted a rate rise.

Terminating a contract is a bit more serious than renegotiating a contract that has ended—in the latter case, the client probably expects to renegotiate. But threatening to terminate can cause serious ill will, and ruin your relationship with the client and agency, and should be avoided unless there are good reasons for it.

There is one other issue contractors should be aware of when entering into ongoing contracts: there should be some assurance on your part that the client or agent will not go bankrupt during the contract period. You can check the contractee's credit rating, or just informally ask around to find out how the business is doing. "Should the contractee go bankrupt, obtaining payment for your work will become a difficult and very 'ongoing' process," Royden says.

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