

Five questions to ask agencies about 'inside IR35' contracts



The Off-Payroll rules and a lack of appetite for risk among agencies and clients unfortunately mean that some contractors might find 'outside IR35' engagements hard to come by beyond April 2021.

Indeed, 23% of contractors told a [recent IR35 Shield survey](#) that their clients had banned engagements with limited companies to negate any tax liability risk, while 42% of those who had received an assessment had been deemed 'inside IR35'.

For contractors considering working 'inside IR35' under Off-Payroll, a lack of transparency presents its own serious risks. Any decision to work on this basis must be fully informed, which means you need to ask the right questions, five of which we've detailed below.

Does the client do status assessments, or have they applied blanket measures?

In response to the Off-Payroll rules, many agencies and clients will be advertising contracts as 'inside IR35' on the basis that the client has completed a status assessment and ascertained that it cannot be offered on an 'outside IR35' basis.

Once agencies mention 'inside IR35', this means the contract must be accompanied by a status determination statement (SDS) detailing the reasons for the status decision, which you as a contractor are legally permitted to contest.

Unfortunately, often no status assessment will have been carried out. This is because many agencies mistakenly refer to contracts as 'inside IR35' to indicate that the client has decided to only engage contractors for that role on a Pay As You Earn (PAYE) basis.

Many contractors would choose to walk upon finding that the client has adopted a blanket approach, though you might still consider the contract if it makes sense financially.

Is the rate quoted the standard PAYE rate?

It's important to clarify exactly what deductions will be made from the contract rate, as many firms are quoting rates inclusive of the hirer's employment taxes. This is incorrect, because the legislation states that the amount paid to the contractor is to be treated as employment income.

Where these mistakes have been made, contractors have received an unwelcome surprise when opening their first payslips to find that their fees are being used to fund the employer's National Insurance (NI) and the Apprenticeship Levy contributions. This is an unlawful deduction, [as per the Social Security Contributions and Benefits Act \(SSCBA\)](#). Some are even deducting payroll processing charges from the contract rate, which is [in breach of the Conduct Regulations 2003](#).

When querying the contract rate, make sure you confirm:

1. The PAYE-only rate
2. That the fee will only be subject to income tax and employee's NI deductions

Finally, use an online salary calculator to work out what your post-tax earnings should be based on the quoted rate and make sure they match up with the figures provided by the agency. You can estimate your tax liability [online with HMRC](#) or use [ContractorCalculator's PAYE/NI net salary tax calculator](#).

Do you operate an in-house payroll?

If the agency isn't running a standard payroll in-house, you cannot be sure that your monies are being taxed correctly. Unfortunately, this is often the case, with 62% of respondents to IR35 Shield's survey noting that an agency had invited them to work via a third-party umbrella company.

Many so-called umbrella companies currently populating the market are actually tax avoidance schemes. Involvement with these schemes could subject you to crippling tax bills further down the line, just like those currently affected by the [controversial Loan Charge](#).

Agencies are obliged to offer you a choice of engagement model. If a contract is advertised as 'umbrella only' then you may rightly be suspicious, as the agency could be profiting from leading contingent workers into a non-compliant scheme.

If you are to accept a contract via an umbrella company, we recommend that you use a [Professional Employment Organisation \(PEO\)](#). PEOs treat the rate quoted by the agency as employment income, while charging the agency separately for employment costs and its own fees, ensuring transparency and compliance with the Off-Payroll rules.

Can you provide me with a Key Information Document (KID)?

The short answer to this should always be "yes", but you shouldn't be surprised if it isn't. As of April 2020, agencies have been legally required to [provide each worker with a Key Information Document \(KID\)](#) before agreeing terms on a new contract. However, an IR35 Shield survey found that 86% of contractors hadn't been provided with a KID for their last contract.

Included within the Conduct Regulations 2003, KIDs are intended to provide transparency for temporary workers, particularly with regards to how fees and deductions affect their take-home pay. If an agency is reluctant to fulfil its legal obligation by providing a KID, you might want to consider looking elsewhere.

How do you account for holiday pay and sick pay?

Any KID provided should explain the calculations for holiday pay and sick pay, which 'inside IR35' contractors should be eligible for [under the Agency Workers Regulations \(AWR\) 2010](#).

These stipulate that workers accrue holiday pay as they work, meaning they receive their full daily or hourly rate when they take holiday. There are different umbrella models and different ways holiday pay is treated, and you need to understand the details.

When querying your holiday pay entitlement, don't forget to ask:

- What are the rules with regards to using or losing holiday pay?
- Does the agency pay out holiday pay when you stop working?
- How is holiday pay tracked and reported each month?
- Is holiday pay accounted for in the quoted rate, or is it paid on top?

Initially, you would only be entitled to statutory sick pay (SSP). However, the AWR should qualify you for the same rights with regards to sick pay as an equivalent employee after a qualifying period of 12 weeks.

It's important to get your agencies response to all of the above in writing. If they claim that you are ineligible for your rights under the AWR,

ask upon which grounds they have made this decision, and consider whether you want to look elsewhere for your next contract.

The harsh reality of business means that some contractors will be given a [Hobson's choice](#), whereby they are effectively told to "take it or leave it". If you are going to take a contract with predetermined conditions, it is important that you fully understand what it is you are agreeing to take.

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