

IR35 case study 1 - a contractors IR35 story

All dates relate to the year 2000.

On 25th January - signed to start with a new client with a start date of 14th February. At this point the contract was not checked for IR35 compliance since the importance was not realised.

Start work at new client. Become aware that the contract is not reflecting the true self employed status and would effectively be caught by IR35 due to the contract.

Talk to agency about the contracts. The agency send the contractor their new contract and agree to review suggested amendments to the existing contract. The agency was not prepared to consider any other contract submitted by the contractor - this would have involved too much work on behalf of the client if every contractor did this.

Contractor employs a lawyer specialising in self employment law, employment contracts, knows the IT market, and is up to date with IR35. The lawyer discusses full working practices with the contractor and reviews the contract in light of these. The lawyer produces a contract report highlighting the areas that need changing, extra clauses that need adding, and clauses that need omitting.

The contract report is discussed and agreed with the contractor.

The lawyer then contacts the agency on behalf of the contractor to negotiate the contract. The agency are extremely helpful and after negotiation the agency, the lawyer and the contractor all agree to the new contract.

Existing contracts are terminated on the basis of both parties agreeing. A new contract is signed and put in place. The new contract started on 3rd April 2000.

Why would the agency not accept a new contract?

For the agency to accept a new contract would have meant that the entire new contract would need to be aligned to their existing contract with the client which would be costly. It would also open the way for each new contractor to present their own contract. This would prove to be costly in terms of legal fees. As my lawyer pointed out, this 'amendments route' was becoming the common practice amongst agencies who were taking an active role in changing contracts.

What was in the contract report?

The contract did not allude to control by the client, but did not allude to expertise either.

There was no **mutuality of Obligation** and a suggested clause was provided.

Right of substitution was in the contract.

Basis of payment needed to be monthly.

Termination - there should not have been a notice period (4 weeks) for the contractor.

Termination - a clause allowing the Client to terminate the contract for whatever reason was removed.

The clauses about opting out of the Working Time Regulations and Minimum Wage needed removing since it was not required in a commercial contract.

A whole section about the project definition needed to be added. This detailed the project and also the expertise that was being supplied by the contractors company.

There were also other re-wordings of the contract required to ensure the intention of the clauses were accurately reflected in the text.

What was the total cost?

£690

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