

Contractor doctor: can I legally go from permanent to contracting at the same company?

Dear Contractor Doctor,

I work for a telecoms company as a permanent employee and am on three months notice. There is an opportunity for my permanent role to be replaced in the Finance department with a contract role in the IS department.

Do you know if there is any employment/tax legislation which mandates that I must leave the company for a certain period before I can return as a contractor.

Thanks for your help.

Thanks

[Name supplied]

Contractor Doctor says:

There are no laws against this at all. However, there might be internal policy which states that an employee who leaves cannot come back for a set period. Also, if you recently started as a permie at the company and got the work via an agent then there might be a fee for the company to pay the agent if you become a contractor there. This would be fairly rare though.

This type of activity where the employee leaves the company on a Friday as a permanent employee and returns on the Monday as a contractor was referred to as the 'Friday to Monday' situation when [IR35](#) was first proposed in 1999. It was this type of activity that the Government introduced the legislation to prevent.

The Friday to Monday concept is attractive for employers and employees, since the employers save money since less Employers NI is paid. They also have an advantage of a flexible work force. The Employee (now a contractor) loses many employment rights since they work through a [contractor limited company](#), but they also get more money in their pocket since their taxes reduce due to lower NI payments and the advantages of operating through a limited company structure.

But now, with the [IR35 legislation](#), if you are caught by the legislation you still pay a large amount of taxes, since the contractor pays all the employers NI that would have been paid by the company. So HMRC still get their money, but you get no employment rights.

Suffice to say, it is worth ensuring you [do not get caught by IR35](#).

For cases where the employee continues to do the same job as when they were permanent this could prove very difficult, because HMRC will argue that the contractor is a '[disguised employee](#)' and under the IR35 tax legislation must pay tax as if they were an employee.

To help mitigate the IR35 risk we recommend contractors have a thorough [IR35 contract review](#) and also take out [IR35 tax insurance](#).

Good luck contracting!

Contractor Doctor

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