

Processing fees for fellow contractors should be avoided

Contractors can find themselves put in an awkward position if they're asked to invoice for a fellow contractor's fees and then deposit the gross amount in their colleague's personal bank account.

The other contractor may not have a **limited company**, or for a range of personal or business reasons may choose not to use their own limited company to invoice their current client. So their reasons for asking another contractor to invoice on their behalf might be entirely reasonable and legitimate.

However, contractors should be aware that this practice could potentially spell disaster and may leave them liable to a range of tax and employment law related issues. It should, therefore, always be avoided.

Employment rights

In the eyes of the taxman, the contractor may be considered to have conferred employment rights on the colleague by invoicing for the colleague's fees and depositing the gross amount in the colleague's personal bank account.

If the colleague is deemed by HMRC, and possibly a court if the scenario escalates, to be an employee of the contractor's limited company, then the contractor's limited company would be required to pay the colleague holiday pay, sick pay and even statutory minimum redundancy payments.

It is also possible, if during the period that the contractor was invoicing on behalf of the colleague, the colleague became pregnant, that the contractor's limited company would also become liable for providing maternity benefits.

Tax liabilities

Technically, if the colleague was considered to have employee status with the contractor's limited company, then this could mean HMRC chasing the contractor's limited company for employer's National Insurance Contributions (NICs) on behalf of the colleague.

Should the colleague not pay all their taxes and employee's NICs, the contractor's limited company could be liable to HMRC for any shortfall, and HMRC will attempt to recover the debt plus possible penalties from the contractor's limited company.

Both HMRC and the courts will not look favourably on the contractor's limited company for the lack of paperwork and the impression that the contractor is assisting their colleague to avoid taxes.

A payroll solution? Try an umbrella company.

In affect, the colleague is asking the contractor's limited company to act in a similar fashion to an umbrella company, but without the formal payroll and PAYE and NICs deducted at source.

If this is the solution the colleague is seeking, then they would need a contract with the contractor's limited company clearly stating the nature of the arrangement. This process simply adds another layer of expense for the contractor.

It might be more appropriate, if the colleague is basically looking for a payroll solution and is unable to use their own limited company for some reason, for the colleague to sign up with a **contractor umbrella company** directly to collect their fees and pay tax and NICs at source.

Acting like an agency

Contractors can legitimately find work for other contractors, bill the client directly for the other contractors' services and pay the contractor after taking a margin, just like an agency.

However, in this scenario the expectation would be that all parties would be using their own limited companies to invoice for fees and to ensure there is no indication of employment status.

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