

MANAGING CONTRACTORS A QUICK GUIDE

Managing limited company contractors can be complex. Travers Smith LLP discuss the various factors that hiring managers need to consider – including how the contractor is engaged and how they are managed on a day to day basis.



Changes to the off payroll working rules came into force in the private sector in April 2021 making matters even more complicated. The changes require businesses to review their relationships with contractors who provide services through intermediaries and, in certain cases, operate payroll.

This guide serves as a reminder of some the key things you need to consider when managing a self-employed limited company contractor as opposed to an employee or PAYE temporary worker. It also contains some of the key considerations where a temporary worker is engaged through an agency on a PAYE basis.

Managing contractors

Since April 2021, large and medium-sized businesses engaging contractors who provide their services through intermediaries (such as personal service companies) need to decide if the contractor is “inside IR35” or “outside IR35”. This involves asking whether the contractor would have been an employee if engaged directly, without the intermediary. However, the tests for IR35 and whether someone is an employee or self-employed are not changing. All that changes is who is responsible for making the determination and (if necessary) operating payroll.

Following are some top tips for managing the engagement of contractors who are determined to be genuinely self-employed and outside IR35, to help ensure they retain their self-employed status.

Dos

- as far as possible, give the contractor free reign on when, how and where they do their work
- engage the contractor to deliver outcomes, rather than on a “role basis”
- require the contractor to correct any defects or sub-standard work at their own cost (e.g. requiring an IT contractor to correct any glitches in a software installation at no extra cost)
- require the contractor to use their own laptop, stationery and equipment where possible, and bear their own business expenses
- allow the contractor to work for other clients, where possible, and so long as this doesn’t interfere with the work they do for you
- where any induction or training is required, keep this separate to any induction or training provided to employees
- separately negotiate any changes in the scope of the work and enter into separate engagements for each new project or work which is additional to what was agreed originally
- where appropriate allow the contractor to send an appropriately qualified, vetted substitute

Don'ts

- exercise any more control over when, how and where the contractor works than you absolutely need to
- engage the contractor to perform a specific role or office which could be performed by an employee
- require the contractor to report into a team structure or give them line management responsibility over your employees
- give the contractor staff benefits like holiday, sick pay, pension, private medical or gym membership
- give the contractor company business cards or email signatures
- conduct appraisals for the contractor, apply the company's disciplinary procedure to the contractor or allow the contractor to raise grievances under the company's staff procedure
- include the contractor in staff induction, training, team building or social events like the Christmas party

Clearly you should not allow the 'tail to wag the dog' – whatever arrangements are put in place need to work for the business. No one factor is determinative – it is the overall picture which is relevant – but hiring managers would be well-advised to consider these issues.

What about PAYE temporary workers?

One alternative to the personal service company is to engage the temporary worker through an agency on a PAYE basis. This has the advantage that the off payroll rules would not apply but it could throw up other issues to consider – there could be an increased risk of the temporary worker claiming employment rights against you and the Agency Workers Regulations (AWR) are also likely to apply.

In addition to the general dos and don'ts listed above, with PAYE contractors, hiring managers should:

- ensure any changes in the relationship are properly reflected in the documentation with the agency and, in turn, with the temporary worker
- avoid negotiating directly with the contractor over pay or other benefits and avoid entering into a direct contract with the temporary worker
- refer any issues about the temporary worker during the assignment to the agency (particularly about performance or conduct during the assignment)
- ensure the temporary worker is provided with the same information about permanent vacancies that direct employees are given
- where the AWR apply, give the temporary worker the same access to onsite staff facilities as employees (eg canteen, changing room, common room, workplace crèche)
- ensure the temporary worker receives equal pay, holiday and working time rights as a comparable employee under the AWR, where applicable, after the relevant 12-week qualifying period.

However you decide to approach the reforms, we're able to support.

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