

Employment Law Fact Sheet No. 24

ENGAGING SELF-EMPLOYED INDIVIDUALS OR CONTRACTORS



Agree terms

Set out in writing what is agreed between the parties from the start.

Consider setting out a fees and payment schedule.

Make it clear that the arrangement does not constitute one of employment and as such they are responsible for their own tax arrangements. It is important that they invoice you for the work carried out and payment should only be made on this basis.

Consider whether you would prefer to pay fees on an hourly basis, daily basis, lump sum basis or on achievement of milestones in terms of the work to be carried out.

Off payroll working rules

Although not affecting many studs, of huge significance to large businesses are changes to off-payroll tax rules that were due to come into force on 6 April 2020 but were deferred due to COVID for a year.

What are the off payroll working rules? Broadly speaking, an entity contracting with a personal service company (such as the end-user client) will become primarily responsible for applying PAYE deductions and for paying employer's NICs. This shifts to the end user client the burden of establishing whether a worker supplied by the personal service company is providing services that are "deemed employment".

This is big news in the quasi-employment field, but likely to affect only the biggest studs, as there is an exemption for end-clients who are 'small businesses', meaning those meeting two or more of the following criteria:

- Annual turnover is no more than £10.2 million
- Balance sheet total is no more than £5.1 million
- No more than 50 employees.

Organisations who are caught will now have to assess the contractor's status (as opposed to the previous rules where the contractor's status was self-determined) to identify whether they are caught by the off-payroll working rules.

HMRC has a Check Employment Status for Tax (CEST tool) service to help businesses determine whether the IR35 rules apply to any contracts extending beyond April 2021. If you are in any doubt about any working relationship try the CEST tool as HMRC will stand by the result.

Health & safety issues

Ensure that you hold valid public liability insurance. Speak to your insurer and notify that contractors/self-employed individuals are being used. Such workers are not employees and so will not be covered by employee liability insurance.

Vetting

Even though the arrangements are only likely to be short term, be aware of the problems that may arise if you do not engage carefully.

If specific qualifications are required ensure that these are held. If necessary, check this with the relevant bodies.

Consider agreeing a short notice period such as one day in case they do not meet your expectations. However be wary of making this reciprocal if being left high and dry would cause you significant difficulties.

Rights

Be aware that an Employment Tribunal can make a determination as to employment status depending on the way the arrangement works in practice. Issues such as the degree of control exercised over the individual; whether they can send a replacement; whether they can refuse to carry out work will be relevant. Even if they are not considered an employee they may be considered a “worker” and thereby benefit from discrimination legislation and other rights. The scope of the definition “worker” has been extended by a succession of cases so even if you have always treated someone as self-employed you should consider carefully their position and take advice as necessary. If you are uncertain or entering into these arrangements on anything other than a short term basis it is sensible to seek advice.