

IR35 off-payroll working legislation: what are the primary IR35 factors?

Off-payroll working was initially going to be enforced into the private sector from April 2020, but since we're still recovering from the disruption caused by Covid19, it has been pushed forward to April 2021.



grant

introduction

Off-payroll working was initially going to be enforced into the public sector from April 2020, but since we're still recovering from the disruption caused by Covid-19, it has been pushed forward to April 2021. Although many companies began preparations for last year, some of you may still be unsure of the detail.

Off-payroll working has been introduced for the contractors who engage via their personal service companies (PSCs) to lessen the influence of tax avoidance. Almost 39 percent of the recruiters believe that there would be fewer contractors available to hire after April 2021. However, the right knowledge and assistance can enable recruitment agencies to still hire the best contractors available in the market.

From April 2021 your end clients will be responsible for making the correct employment status determination for your candidates. When doing so, these factors are to be considered:



supervision, direction, or control

This factor relates to the extent of worker's supervision, direction or control over the services being provided to your client. When the client has relatively greater level of control over the services provided by the contractor, it implies that the contractor is most likely to fall inside IR35 and vice versa.



mutuality of obligation

Mutuality of obligation refers to the relationship that exists between the worker and the hirer. The hirer is obligated to deliver continuous work to its workers daily. An independent worker, however, does not expect any further project from the employer after the completion of the assigned work.

Mutuality of obligation looks at the following:

- how the work is offered and accepted
- how often the work has been refused
- whether the work is offered in future
- continuity of work



right of substitution

In case the hirer feels obligated to assign the contractor with another assignment right after the completion of one, it is an employer-employee relationship. Such scenario suggests the candidate meets the criteria of being inside IR35. This scenario also includes the condition whether someone else can alternatively replace your worker to get the job done or not. If yes, then your contractor is an independent worker.

It is your end clients' duty to carefully assess these working conditions before issuing status determination statements (SDS) to its contractors, your candidates.



part and parcel of organization

This part refers to the working practices that are often overlooked while determining the employment status of an employee. These practices include stationery and equipment, work desk, computer, the place where the work is going to take place. An independent worker can choose to perform work from any place he pleases as long as the work gets done. An employee of the company, however, is obliged to show up at his/her designated workplace no matter what.

Moreover, in addition to these factors, there are other factors that too have an impact while the clients determine the employment status of your contractors. These factors include holiday pay, working hours, other employee benefits, etc.



grant

what can be done?

As an agency, it is important that you know your options. For your contractors that are still inclined towards operating through their PSC can refer to our giant fee-payer service. But if they deem inside IR35 they can choose between or PAYE options. You ought not to worry about the changes regarding off-payroll working with a fully serviced umbrella solution.



about giant

Since 1992 **giant** have provided specialist, end to end workforce management software and support services for organisations of all sizes, globally.

We invest heavily in our cloud-based software which ranges from talent acquisition and onboarding through to timesheet management, billing and payroll. Our support services include candidate screening, employment solutions and legislative risk management including employment status advice.

You can relax knowing your data is safe with us. Our commitment to compliance protects your business from risk and our rigorous international security standard ISO 27001 ensures that your data is GDPR secure.



 0330 024 0946

hello@giantgroup.com
www.giantgroup.com

giant