

The importance of working via an IR35-compliant contract recruitment agency

From April 6th 2021, medium-and large-sized private sector businesses will have to start making their own IR35 determinations for all roles where they want to use a contractor, just as organisations in the public sector have been doing since 2017.

Up until this point contractors within the private sector have had the freedom to assess their own assignments against the requirements of IR35, but from April, this decision-making ability will be taken out of their control.

As an established specialist technology, change and engineering recruitment agency, we pride ourselves on our reputation built over 30 years, and our ability to deliver skilled flexible resource to fit the client's requirements. We're currently supporting a number of our clients with the determination of contractors' IR35 statuses going forward towards April's change in legislation, as well as programmes to make these IR35 readiness projects as painless as possible for all involved.

IMPORTANT: There are several key questions that contractors should be asking of their recruitment agent:

- Is the client able to make accurate IR35 assessments in your view?
- Do you feel enabled to push back to said client if you feel they are wrongly assessing a role?
- Have you seen evidence of so-called 'blanket assessments'?

Is the client able to make accurate IR35 assessments in your view?

There's been a lot of criticism surrounding HMRC's Checking Employment Status for Tax tool (CEST), and a lot of queries about the validity of the assessment results it produces. In our experience, it's not a question of HR departments deliberately inputting inaccurate information into the CEST tool, but more the case that a lot of inputs are based on misunderstandings around how their technology departments and their contract workers operate on a day-to-day basis. This, coupled with a risk-averse approach, means that lots of contractors feel that their assessments are incorrect.

A lot of contractors have specific deliverables; they do a particular task or project and then they move on to their next assignment somewhere else. If the right people are involved in making assessments – people who really understand the roles that contractors are undertaking – this information is captured. However, if this doesn't happen, assumptions can be made, and contractors are required to be on the payroll.

Do you feel enabled to push back to your Client if you feel they are wrongly assessing a role?

Under the reformed legislation, hirers are legally required to introduce an appeals process, to give workers the ability to question and raise objections to a status determination if they don't agree with it. Agencies need to be able to support workers with this process – although legally, the appeal must be considered and responded to by the hirer.

Have you seen evidence of so-called 'blanket assessments'?

Be aware of the blanket approach! Some organisations have decided to adopt a one-size-fits-all strategy to mitigate against the potential tax liabilities and operational costs of the new IR35 tax reforms. Hirers are obliged to take 'reasonable care' in undertaking IR35 assessments, so it's important that the assessment you receive is specific to the role you are doing.

Contractors should only partner with those recruitment agencies which **actively show they understand the complexities of IR35**. If an 'inside' of IR35 status is given, there are still different options available to you in terms of how you can provide your services, and a good agency will be able to talk you through these options and help you to decide which is best for you. Similarly, agencies should be able to talk about other, more innovative models – like Employed Consultant solutions, and Statements of Work which provide other engagement options for workers.