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The Agency Workers Regulations - The Contractors Perspective

By now some of you may have already started to hear new terminology and be asked questions that have never been asked before; you can be fairly sure it all relates to another new piece of regulation that has been thrust upon us; The Agency Workers Regulations.

The Regulations are designed to provide a higher level of rights to 'agency workers', what we know as contractors, who obtain their assignments through recruitment companies; as the name suggests.

If you are engaged directly by the end client The Agency Workers Regulations will not apply, as you are not an 'agency worker'.

Where the Regulations apply contractors now acquire certain rights from the first day of an assignment and the right for 'equal pay' after 12 weeks. Equal pay is assessed as more than just basic pay and includes comparison to other benefits such as additional holiday entitlements and bonuses.

When assessing equal pay the comparison has to be made to an employee doing the same work or the company pay scales; in essence you should be remunerated no less than if you were employed directly - for the vast majority of contractors this has no

impact as they will already be paid more than their full time counterparts.

The issue now is that this has to be formally documented and recorded by the recruitment company and umbrella.

Whether you are a limited company contractor or use the services of an umbrella you are likely to experience some changes.

We have produced a guide written specifically for contractors, [we also produced a specific one for recruiters and end clients], that highlights and explains some of the changes you may experience and the details behind it.

We strongly suggest you familiarise yourself with these new regulations as it will help you understand, and prepare for, some of the changes that are likely to result.

In summary; If you work through an umbrella you may find the following:

- You may have to change umbrella provider as many recruitment companies will move to a restricted preferred supplier list; check with your recruitment company before signing up with a provider.
- If equal pay is not achieved you will have to operate through an umbrella known as a Swedish Derogation Umbrella; this is similar to a traditional umbrella except it pays you compensation for giving up your rights to equal pay.
- You should raise any issue directly with your umbrella provider, or recruitment company, to try and resolve it before proceeding to an employment tribunal.

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- You will find that some assignments are not available to umbrella contractors as end clients can, and will, instruct their recruitment partners that they only want to engage with contractors who operate through their own limited company.

Read The Contractors Guide to get the full details and understand all your options.

Limited company contractors will also experience some changes, some of which maybe:

- You are likely to be asked to confirm whether you operate 'in business on your own account.'
- In scope contractors will be caught by IR35 and recruitment companies may ask for an accountant's confirmation that the deemed payment calculation is being applied to the income from that assignment.
- In scope contractors, those not in business on their own account or under the supervision and direction of the end client, will be provided with separate contracts where the terms are likely to fail any IR35 tests.

It is important that contractors who operate through their own limited company's understand these regulations as, although they are not directly related to IR35, where they apply it will determine your IR35 outcome.

You can read all the details, together with our contractor questions and answers section, to familiarise yourself with The Agency Workers Regulations on our website here.

IR35 - Let Sleeping Dogs Lie!

Following a freedom of information request HMRC have released details on the number of IR35 enquiries they have carried out together with the taxes raised as a direct result of these enquiries.

The release of this information must raise a number of key questions and issues:

1. If the total number of enquiries opened since 6th April 2006 is only 322, yes 322 in 5 years, where did all the organisations claiming to have fought, won or defended thousands of cases get their figures from?

It would now appear that much of this was no more than scare mongering to sell a few insurance policies to fill the coffers.

2. The last 3 years have seen 25, 12 and 23 cases, now whilst any HMRC enquiry is an unpleasant experience it is difficult to see how this small number of cases have warranted the volumes of discussions and time devoted to the topic.

Using anyone's estimate on the current number of contractors this must represent no more than 0.01% of the contracting community.

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3. The revenue raised from the enquiries is diminishing which probably reflects the lack of success HMRC has had since the new Tax Tribunals took over from the Commissioners.

It must be remembered that the revenue raised from the enquiries is not the total revenues. HMRC do not have figures for those that pay inside IR35. The main revenue comes from the deterrent effect of IR35. It was estimated that if the Chancellor had abolished IR35 in the budget the fiscal risk amounted to nearly £500 million.

Using this information to call for IR35 to be abolished, as some seem to be doing again, is dangerous as it just continues to provide IR35 with a high political profile. This, we believe, is not in the contractors best interests; especially as it is only a few months after a full review was carried out where those that had been campaigning for abolition never even suggested it as an option, with the resulting conclusion to make no amendments.

The only people that seem to benefit from keeping its profile this high are those trying to sell insurances, or memberships, on the back of it and certainly not the contractors.

Professional Passport Launches Online Company Formations

One of the most frequent requests we get from contractors is the question of where on the site they go to form their own limited company; we are pleased to announce that we have now launched our online company formation service specifically aimed at

contractors.

The new formations service allows you to check directly with Companies House that your preferred company name is available, and where that is the case you can instantly secure the name and create your company.

Our service is one of the simplest processes available and even includes templates for single director/shareholder companies and a template for a two director/shareholder company, often referred to as a husband and wife company. Where you select one of the templates we have made the process even more straight forward for you.

Don't worry if you want something different as you can select to form a company of your own style and it will guide you through shareholders and directors to deliver the structure of company you want.

As with everything Professional Passport does we make our charges transparent and open, there are no hidden charges or catches that you only find out about later; some of the other online formation services require changes to be made after the company is formed and these can be expensive to complete.

When you form a company through our online service there is no requirement to use any particular accountant although we will highlight those that we have audited and approved.

If you decide to open a Barclays Business Bank Account the credit you receive from Barclays effectively means that you can get your company registration for free.

We hope you find this a valuable addition to our services.