

Are you ready for the implementation of the new “off payroll” working rules to the private sector?



Hope of the IR35 changes being jettisoned at the last minute were short-lived and we had confirmation in the recent budget that the implementation of the new “off-payroll” working rules will take place on April 6 2020.

With an estimated 230,000 contractors affected, this is likely to have a big impact on businesses within the Advertising, Technology and Media sectors.

The new rules will see the responsibility for identifying employment status pass to medium and large sized companies in the private sector that engage the services of contractors via an intermediary (typically a personal service company). These companies will be required to make PAYE deductions and pay NI contributions where “deemed employment status” is found to apply.

Many larger companies such as Barclays and Lloyds have decided to bring all contractors onto their payroll rather than attempting to grapple with this new legislation. However is this reaction over the top? Will private sector businesses that choose not to take the same step still be able to engage a flexible and self-employed workforce without getting into trouble with HMRC?

A recent survey of more than 12,000 contractors found that 23% of contractors plan to quit contracting due to the new IR35 rules resulting in 52% of companies losing at least half of their contractors.

Those contractors who decide to continue may choose only to engage with companies that come within the “small company” exemption and thus fall outside the scope of the new legislation or alternatively seek contracts abroad where possible. Others, who are determined by their clients to have “deemed employment” status under

the new rules are likely to take steps to ensure they are not losing out financially by increasing their rates.

Below is an example of the difference, from a financial perspective, for a contractor who is found to have “deemed employment” status under the new rules and who currently charges a daily rate of £500. Their current net monthly income is £6,092 (based on them working 5 days per week)

- If they get caught by IR35, their net monthly income decreases by **£1,024 (16%)** to **£5,068**
- They would need to increase their daily rate by **£148 (29%)** to **£648** to achieve the same net income

If contractors are intrinsic to particular projects or in demand then companies who wish to continue to engage a self-employed and flexible workforce may be left with no option but to pay these additional sums.

The good news, from a business perspective, is that HMRC recently announced that during the first year it will not impose penalties on those businesses unless there is evidence of deliberate non-compliance with the new rules. Minor inaccuracies will not be penalised nor will HMRC use information obtained under the new rules to open investigations about individuals’ tax status in respect of previous years.

HMRC has also published new draft guidelines [guidance](#) in its Employment Status Manual (ESM) which include information on how Status Determination Statements (SDS) apply and information on what constitutes “reasonable care” in making an SDS. Notably larger multinational businesses will be held to a higher degree of care than a smaller entity. They’ve suggested that acting reasonably means to act in a way that would be expected of a prudent and reasonable person in the client’s position. Indicative behaviours of reasonableness include using CEST, seeking professional advice and making a new SDS should the worker’s working practices change. More interestingly, examples of behaviour which would not constitute reasonable care include taking a blanket approach to deciding status and deciding that all contractors are caught as well as subcontracting out the SDS process without confirming accuracy of its conclusions.

For advice on how IR35 could impact your business and for practical and commercial guidance and support in implementing the new rules please contact our [employment law team](#).



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