



The Agency Worker Regulations (AWR) 2010

Issues and Exclusions for limited company contractors and the self-employed

Here we look at the issues agencies need to consider when deciding whether a person who works through a limited company or is self-employed falls inside or outside the scope of the Regulations.

There is no specific exclusion of limited company contractors in the EU Directive of Agency Workers. Instead, the Department of Business Innovation and Skills (BIS) have dealt with this within the Regulations.

The AWR and Limited Company Contractors

The UK Government takes the view that workers who are genuinely in business on their own account will fall outside the scope of the AWR. However, Regulation 3 provides no specific exclusion for limited company contractors.

Deciding on whether or not a limited company contractor falls within the scope of the AWR depends upon whether they meet the definition of an agency worker.

Any individual who is in business on their own account – through a limited company or not – and who doesn't work under the hirer's direction, is not covered by the Regulations.

The focus therefore will be on the relationship between the contractor's company and the end user client or the agency. A contractor working through a personal services company will fall outside the Regulations if the contract with an agency states that the individual is a customer of the contractor's company.

In the event of an agency worker making a claim for equal treatment at an Employment Tribunal, the outcome would rest upon whether the person is in business on his or her own account.

The Regulations go further than the self-employment tests of IR35. They apply not only to individuals who have a contract with the agency, but also to those who fall into a broader category of worker who may have a contract that requires them to provide their services personally.



Defining who is ‘genuinely self-employed’

The points an agency should consider when deciding whether someone is ‘self-employed’ are provided in guidance notes by the BIS. These include:

- The terms agreed between the parties in upper and lower contracts
- The degree of autonomy given to the contractor by the agency
- The amount of supervision exercised over the contractor
- Whether the contractor submits his own accounts to HMRC
- Whether the contractor is entitled to pay at times when no work is being done
- The amount of financial risk carried by the contractor, and the extent to which the contractor can increase his own profits
- Whether there is a requirement for the contractor to provide services personally
- Whether the contractor provides tools, equipment and materials to undertake the work
- Whether the contractor is obliged to work exclusively for a single client, or otherwise.
- Whether fixed hours of work have been agreed – or there is a choice about when to work

Limited Company Contractors who work through an Intermediary

Workers supplied via intermediaries can still be agency workers under the terms of the Regulations. This applies where a temporary work agency is involved and individuals work under a hirer’s supervision.

The Government’s decision not to automatically exclude limited company contractors is based on their intention to limit the impact of the Regulations on those who are genuinely self-employed.