

# 6 WAYS A CONTRACTOR COULD BE DEEMED INSIDE IR35



## 1 If the contractor can't provide a substitute to replace them when they're ill or on holiday.

By not being able to have someone who can carry out services when they're not available, contractors may fail the "substitution" test. However, many industry and technical specialists have skills that can't be replicated by a substitute.

## 2 If the contractor is told what projects they have to do and how to do them.

An important element of "control" is that contractors still have a say in the way they work. While the engaging company sets the objectives of the work, they shouldn't be telling the contractor how to carry it out.

## 3 If the contractor is being paid on the basis of time spent.

Contractors being paid on the basis of time they spend working, rather than on a project basis, may look more like full time employees in the eyes of HMRC.

## 4 If the contractor is given set working hours.

Getting told what time you need to be at work and what time you should leave may indicate an employee/employer relationship.

## 5 If the contractor only has one client and they work for that client five days a week.

There may be exceptions to this rule if the contractor is being brought in for a large project over a short timeframe.

## 6 If the contractor attends staff meetings or engagements.

Attending team meetings & other staff engagements or eating in the staff canteen could all indicate that a contractor is an employee rather than a contractor.

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## TALK TO THE EXPERTS

It's important to use the time between now and April 2020, to first consider whether your contractors might be caught by IR35. If they are caught, you need to think about how you can manage the new rule in a way that strengthens your relationship with contractors.

Here are the three key options available:



**Bring contractors in-house.** This option assumes your contractor would be willing to forgo the tax advantages enjoyed by the self-employed. The upside is that you retain your talent. The downside is that you are adding to your employer responsibilities by way of legalities and insurances etc.



**Engage an umbrella company for 'caught' contractors.** This would preserve headcount but there is a cost implication. Higher agency costs, lower gross pay, more tax and lower net pay are all unavoidable by-products of an umbrella company compared to a private limited company.



**Partner with a Professional Employment Organisation (PEO).** This model is built around the HMRC recognised joint-employment method and carries a multitude of benefits.

The PEO becomes the 'employer of record' and takes on all the usual employer responsibilities leaving your business to carry on using your contractors without adding to your employer liabilities.

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