



January 2020 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- Are they contractors?
 - Worker status: Substitution Clause
 - Does contributory conduct in an unfair dismissal case have to be gross misconduct?
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Are they contractors?

The government is proposing new off payroll working rules for the private sector from April 2020.

The off-payroll rules (IR35) introduced in 2000 aim to ensure individuals working through an intermediary, usually a personal service company (PSC), who would be regarded as employees if engaged directly by the client, pay the same income tax and National Insurance contributions (NICs) as if they were employed.

Under the current rules, the PSC or contractor decides whether IR35 applies and pays tax and NICs if necessary. This means the tax risk currently lies with the contractor rather than the client.

Under the new off payroll working rules, it will be for the business that takes on a contractor to determine whether IR35 applies and, if so, to make the necessary deductions for tax and NICs and pay employer NICs.

The reforms will apply to medium and large businesses, but not small businesses. To be considered 'small', a business would need to satisfy two or more of the criteria in the Companies Act 2006:

- (i) have an annual turnover that is not more than £10.2 million;
- (ii) have a balance sheet total of not more than £5.1 million; or
- (iii) have no more than 50 employees.

The government is currently consulting on thresholds for unincorporated entities, which are likely to be based on the turnover and employee number.

Employers: even if you are exempt, the IR35 checklist still applies regarding the position of contractors.

Contact us: we can help with advising on IR35 and contractors

Worker Status: Substitution Clause

On the IR35 checklist one of the points is that the contractor or worker can substitute their services if for some reason they are not available.

So, does a substitution clause in a person's service contract (contractor agreement) automatically mean they are denied 'worker' status?

Not on the facts, held the EAT in *Stuart Delivery Ltd v Augustine*.

Mr Augustine was a delivery courier, undertaking fixed hours 'slots' for Stuart Delivery Limited (SDL). During the slot Augustine was under the control of SDL, he was unable to

leave the zone he operated in and had to do the deliveries offered to him in return for a guaranteed hourly wage.

He could not be available to other delivery companies during the period (typically 3 hours) of a slot.

A tribunal looked at the arrangement where Augustine could release a slot he had signed up to back into the pool of approved couriers via SDL's app.

This was not a proper substitution clause which would deny him 'worker' status as he had no control.

Employers: make sure you have the right contractor agreement in place.

Contact us: we can assist with contractor agreements

Does contributory conduct in an unfair dismissal case have to be gross misconduct?

No, held the EAT in Jagex Ltd v McCambridge.

The employee was dismissed after finding a document on a communal printer with a senior employee's pay on it.

He pointed out the document to a colleague and someone else, began a guessing game as to what the senior employee's pay was.

The employee was not involved in that game but was dismissed for gross misconduct for disclosing pay details.

The tribunal had decided though that there should be no reduction for contributory fault as the disclosure was not gross misconduct.

The EAT said the tribunal misdirected itself that only findings of gross misconduct can result in a percentage reduction of an award to an employee for their contributory fault.

What needs to be considered is whether the employee's conduct was blameworthy or culpable, and if so then decide if a reduction to their award should be made.

Employers: take all circumstances into account with a disciplinary

Contact us: We can assist with investigations and disciplinarys

For more information or assistance Email: enquiries@employmentlawsupport.co.uk





Silverstone

Business Forum

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Employment Law Support Principal: Caroline Robertson
Solicitor Non-Practising