



Industry Update - September 2006

Welcome to the first Industry Update email from Nasa Consulting Limited.

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As market leaders in the provision of contractor management services we hope that our updates on issues affecting recruitment agencies, end clients and contractors alike will prove helpful for you.

Avoiding Deemed Employment

Recent high profile court cases¹ have found that some of the characteristics of the relationship between the contractor and the end client have effectively formed an employment relationship between the two. The consequences of this 'deemed' employment are that both the worker and the end client can be in line to suffer higher levels of taxation and national insurance.



Supporting the freelance worker

This issue is now top of the concern list of many of the companies that use interim workers. Here we have a look at the steps the end clients can take to ensure that an agency or business relationship is maintained and that the relationship does not reflect an employment.

The first and perhaps most critical determinant of the relationship is the length of time the contractor has spent working with the client. In this article, we are not concerned with the contractor who operates as PAYE for 3-6 months as it is highly unlikely that an employment relationship could be formed in that period. We are instead looking at those relationships which last over 6 months and which may continue for many years.

Contractors who have an ownership of their limited company or in a shared company are showing less employment characteristics than those contractors who work under a full PAYE payroll service. The latter group are being payrolled in the same manner as an employee and certainly in the longer term are themselves acting like employees, whilst those who have company ownership incur business expenses, extra admin but receive taxation allowances which reflect they are in business on their own account.

Contractors who opt out of the 'conduct of agency' regulations are taking on more business risk and showing less employment characteristics than those contractors who do not opt out of the regulations. Those opted out contractors who have ownership in their company show significantly less employment characteristics than PAYE payrolled workers who have not opted out. End clients should have the highest level of concern of a deemed employment with this last group of workers and certainly if the working relationship lasts for over 12 months do set themselves up for employment issues. It is allowable for recruitment agencies and businesses to advertise roles as being 'opt out' roles and it is up to the end client to request this when notifying the agency of the vacancy.

Other important factors that end clients consider when handling temporary workers include:

- Distancing the worker from employees by not inviting use of company facilities, inviting them to social functions and providing mobile phones
- Ensuring any training courses and professional development costs are borne by the contractor
- Ensuring recruitment agencies handle any termination processes
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By providing strong contract documentation for the supply of services together with the above suggestions, end clients significantly reduce the likelihood of an employment, especially if their contractor has share ownership of their supplying company and have opted out of the Conduct of Agencies regulations.

¹ *Muscat v Cable and Wireless 2006 Brook St v Dacas 2004 Demibourne Ltd v Revenue and Customs 2005*

