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- **IR35: two recent court cases assist all freelancers**
 - **PAY +: a £9.99 low cost payroll service**

With the Chancellor's Budget being released next Wednesday (21st March), all eyes will be firmly fixed on Gordon Brown when he announces the Treasury's MSC Legislation in its final form. Despite all the speculation from various corners over the last few months, there is one thing we are certain about – IR35 compliance has once again thrust into the limelight as contractors turn to running their own limited companies.

We at Nasa Consulting thought you may benefit from some up to date information on two court cases that will assist your contractors in handling IR35. Below we have also set out some steps that you can take with your own contracts to help strengthen your contractors' position as well as include information on the unique IR35 Early Warning System introduced by Nasa Consulting to ensure contractors are fully aware of their IR35 position and allow them to prepare accordingly.

The Court Cases

The first case, *James v Greenwich Council 2006*, involved a PAYE temp working in the Asylum Seekers Department at Greenwich Council via a recruitment agency, on a standard agency contract.

The parties agreed that the worker, Ms James, was under the direction, supervision and control of the end client Greenwich Council but the courts held she could not be deemed an employee of the Agency or the End Client. This is because the council was not obliged to provide her with work and could use other temps to fulfil the role if she was ill or could not attend.

The judges decided that there was a lack of Mutuality of Obligation (MOO) between the two parties due to this, and as such, by law they could not rule an employment relationship existed between the temp/contractor and the end client. MOO is the obligation by the end user to continuously provide work and pay to a worker and the obligation of the worker to have to accept that work. In an employment relationship the employer must provide work continuously and pay for it, and where this obligation is not in place there can be no employment relationship.

The application of this to limited company contractors (and any agency worker) is that if the client is not obliged to provide the contractor with work, then they cannot be caught by IR35 regardless of whether the contractor is being subject to control by the Client.

The only time contractors will fall foul of this is if a client has to give them work and pay them, including during a notice period at the termination of a contract. If on the other hand, the client can ask the contractor not to work for a few days or can end their contract early without notice payment, they cannot as an agency worker under this ruling be an employee of the end client and HMRC will have difficulty imposing IR35 taxes.

The second case involved a Mr Craigie in *Craigie v Haringey Council 2007*, who supplied his services as a temporary worker to Haringey council as an Estates Services Officer through an agency. He was paid by his agency for hours worked but not for hours not worked due to sickness etc. A claim for unfair dismissal against the council arose when Mr Craigie applied for a permanent position with the council which was subsequently turned down on evidence that he had taken significant amounts of sick leave in the period he had been engaged through an agency by the council.

No claim was brought against the agency in this case as the contract clearly stated that there was no employment relationship and no day to day control was exercised over the worker by the agency.

The tribunal looked over several previous court cases dealing with this particular area, relying mainly on the judgement laid down in the first case above. As such, the lack of Mutuality of Obligation on the side of both Haringey Council and Mr Craigie led to the appeal being dismissed.

The fact that Mr Craigie could choose not to accept any work offered to him by either the council or the agency, and the fact that the council and agency had no obligation to offer any work to Mr Craigie, even when on assignment led to the conclusion that there was no implied contract of service, and as such no employment relationship.

Notice Period

With Mutuality of Obligation effectively taking top spot for importance in determining whether an employment relationship is in place between a contractor and their client/agency, there is a simple alteration you as the agency can make to the standard terms and conditions that you supply to your contractors that will help put them outside IR35.

The area that can be improved is with regards to notice periods. The ideal situation would be that the contractor has no notice period at all, or if there is that they do not get paid if they do not work. This follows the general principles of 'no work, no pay' and demonstrates a strong position as being outside of IR35.

IR35 Early Warning System

At **Nasa Consulting** we believe we are the industry leaders in IR35, and by resolving this issue for our contractors we will save them paying an extra 20% of their earnings in taxes. A system has been developed by Nasa to ensure that our contractors are fully aware of their IR35 position and the risks that are associated with it. Following a review of the contractual terms and working practices, we code each contractor either **Green** (OK), **Amber** (warning), or **Red** (alert) and address their issues accordingly.

For those clients we give a code **Red**, we will strongly recommend that they pay the required taxes or take out the appropriate insurances. This underwrites any tax liability they may have in the future and indemnifies any other parties in the contract chain. In order to avoid wasting money on insurance that is not needed we obviously advise those contractors who are code **Green** not to take out the insurance, whilst code **Amber** clients are given a detailed explanation on what their IR35 risks are, and can address them accordingly.

HMRC will continue to carry out random checks on IR35 status. These are difficult and often drawn out inspections, but fortunately for **Nasa Consulting** clients we will represent them. With our pragmatic and experienced approach, it's not surprising that not a single one of the contractors we have worked with has ever been caught out by IR35!

PAY +

This is Nasa Consulting's low cost payroll service. It is ideal for temporary workers/contractors who are just starting out, whose pay rate is anything up to around £12 per hour or they may only be working for a short period.

Your contractor would become an employee of an 'umbrella' company that is managed by **Nasa Consulting**. Full PAYE and NIC are deducted on their earnings accordingly. We would perform all administration on behalf of the umbrella so it is convenient and hassle free for the contractor. By claiming business expenses (such as travel and subsistence) some of their tax may be offset and take home pay increased.

Using **PAY +** couldn't be easier. All the contractor would have to do is send in their timesheets and expense forms (with copies of receipts) to **Nasa Consulting**. We will invoice you the same day and as soon as we receive money we will pay the contractor with a same day CHAPS payment.

The service also covers contractors for Employers & Public Liability with a limit of £5 million, and Professional Indemnity cover of £1 million.

This service is also ideal if you do not wish to payroll your temp workers or contractors through your own systems.

