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Hot off the press - Court of Appeal ruling assists contractors on IR35

In a long awaited and significant judgement released today by the Court of Appeal, the eminent judges have affirmed the case that the particular agency worker is not the employee of the end client, Greenwich Council.

The case involved a Ms Merana James, who claimed unfair dismissal because her agency sent another temp worker to Greenwich Council when she took time off from the work. Upon her return after a month's absence Ms James found another temporary worker supplied by her agency carrying out the role. She then claimed that she had worked for 3 years with the client and claimed she was an implied employee and entitled to the entitlements of a permanent worker.

The courts found that the length of time she had worked for the client had not provided her with employment status. They stated the governing contract she had was a temporary agency workers agreement with the agency which had not been supplanted with an implied contract of employment between her and the end client.

Of particular significance is that the length of 3 years had not created an employment relationship. Many clients and contractors fear that after a years work, an employment relationship can automatically exist between the two and IR35 becomes applicable.

This ruling has certainly quashed that and equally important, the initial employment tribunal judgment held that there was a lack of Mutuality Of Obligation (MOO) between the client and worker in the agency relationship, which then prevented an employment relationship from being established. This judgment has not been overruled and will now be persuasive to future employment status cases, which includes IR35.

In conclusion, for IR35 purposes, where there is an agency relationship in place and where the client does not guarantee work throughout the period of contract, nor pay when work is not carried out, it is now highly unlikely that IR35 taxes can be applied.

Please contact Nasa Consulting for further information.