

Employment Status and IR35

In order to establish whether you fall into or out of IR35 you will need to assess your employment working arrangements. You can do this by going through the following steps:

1. Read the “Advice to Locum Pharmacists” briefing to get an understanding about employment status (employee, worker or self-employed);
2. complete the “Employment Status Checklist”;
3. Review the way you work and your working arrangements and complete the Check your Employment Status Tool (CEST), see below.

Disguised employee or business?

If you are a genuine contractor in business on your own account, you should not be concerned about IR35. However, IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an *intermediary*, such as a limited company, but who would be an employee if the intermediary was not used. ‘Disguised employees’, if caught by IR35, are liable for Tax and NICs in the same way as an employee. It can reduce the worker’s net income by up to 25%, costing the typical limited company contractor thousands of pounds in additional income tax and NICs.

Extension of IR35 to the private sector

The draft legislation on IR35 will be published on 11 July 2019.

It is anticipated that the changes will come into effect in April 2020 and put the responsibility on the end user to identify if you are working as a “disguised employee”

Whilst the onus will be on the end-user (i.e. the company for whom you work) to identify who is actually caught by IR35, you will also have to be live to the consequences of an IR35 determination by the HMRC as there likely to be financial consequences for you.

CEST

Whilst end-users are being encouraged to use the CEST online status checker to establish the status of the contractors they engage; our advice is that you do the same and see if you are caught by IR35.

We have included the “Employment Status Checklist” and “Advice to Locum Pharmacist” documents on the website to assist you in checking your employment status, in addition to this advice, but we would urge you to go to the government website:

<https://www.gov.uk/guidance/check-employment-status-for-tax> use the Check your Employment Status Tool (CEST) to see if you are covered by IR35. The questions can seem confusing and the tool is being updated and so you will need to check any changes.

The following site has a far easier tool for an initial check:

<https://www.crunch.co.uk/knowledge/ir35-calculator/>

However, the government site is the one that you would rely on as evidence that you have taken reasonable steps to establish your tax position should you find yourself in any dispute and so you should familiarise yourself with it and try to answer the questions as accurately possible.

Tax advice

The PDA employment team are not qualified to advise on tax matters, so you may wish to discuss the “pros” and “cons” with your accountant first, as they will be in the best position to advise you on how you have run your business. However, if you do not have an accountant, you may wish to speak to ARAG, which is part of the PDA’s extended legal services. You can contact them on 01179 171698 and quote Scheme Number 511642; their website is <https://www.arag.co.uk/>.

Are you really a worker or employee?

You may be in a role where you have no choice but to work under a self-contract, i.e. by paying your own tax and NI, but in every other respect you are an employee or worker. You may not have the bargaining to question the way you have worked for the organisation without risking the contract ending.

You may have worked under a “sham” contract for many years without daring to question your status.

In these circumstances, you may not have benefited from the tax advantages and not set up an intermediary, so have lost many of the benefits of being an employee such as holiday pay, sick pay, pensions and so on.

In this situation, you may apply for employment status with the organisation by sending a letter to state by you are an employee and claim employment status. If do and your contract ends as a result, you can make an application to the Employment Tribunal for employment status and all the losses that flow from it.

Employment Tribunal claims

If, considering the attached documents and the above, you think that you may have a claim for employment or worker status; have been dismissed without notice as a result of the IR35 legislation; a potential employment tribunal claim or have any other issues concerning your status, please contact us on enquiries@the-pda.org and we will advise you further.

Remember that you have only 3 months less 1 day from the date your contract ends in which to start early conciliation with ACAS (which you have to do before bringing a claim in the Employment Tribunal).