



**Competex Umbrella Ltd**

Employee Guide

[www.competex.co.uk/umbrella](http://www.competex.co.uk/umbrella)

# Welcome to Competex Umbrella Ltd

Thank you for your interest in Competex Umbrella Ltd.

This guide sets out our standard procedures for working with interim managers, consultants, contractors and other independent professionals who are required to work through an umbrella company.

Competex Umbrella has been created to meet the needs of independent professionals, particularly those who, if working through their own limited company, would be caught by the 'Off-Payroll Working' rules. It is also appropriate for independent professionals who might otherwise be expected to work on their client's payroll and wish to retain their independence.

Competex has a 20 year history of looking after the affairs of senior independent professionals and we understand their unique offering to the world of business, as well as their particular professional needs. In light of this, we wanted to go beyond the usual offering of an umbrella company and allow our 'employees' to enjoy many of the same features of working through a limited company, such as pension contributions, certain tax planning possibilities, and PI insurance. You will find more information relating to these features in this guide and we hope you find it of use.

If you have any questions, or need anything in this guide clarified, please get in touch.

A handwritten signature in black ink, appearing to read 'Charles Fowler'.

Charles Fowler  
Director  
Competex Umbrella Ltd

# Contents

<b>Terms of Employment</b>	<b>1</b>
<i>Contract of Employment</i>	1
<i>Provision of work</i>	1
<i>Identity</i>	1
<i>Professional capability</i>	2
<i>Place of work</i>	2
<i>Employment agency regulations</i>	2
<i>Working hours and rest periods</i>	2
<i>Holidays and other absences from work</i>	2
<i>Termination of assignments in the case of non-payment by the agency or client</i>	2
<i>Overarching contracts of employment - an explanation</i>	3
<b>Getting Paid</b>	<b>4</b>
<i>Your salary</i>	4
<i>Method of payment</i>	4
<i>Employer's National Insurance</i>	5
<i>Automatic enrolment pension contributions</i>	5
<i>Personal pension premiums</i>	5
<i>Holiday pay provision</i>	5
<i>Maternity/paternity pay provision</i>	5
<b>Claiming Expenses</b>	<b>6</b>
<i>Claiming expenses: the mechanics</i>	6
<i>Claiming expenses - working through an agency or provider</i>	7
<i>Travel and subsistence expenses</i>	7
<i>Charging travel expenses to and from home</i>	7
<i>Charging travel expenses for exceptional journeys</i>	7
<i>Other expenses</i>	8
<i>Staying away from home on an irregular basis</i>	8
<i>Subsistence allowances</i>	9
<i>Mileage</i>	9
<i>Use of mobile phones and other telephone costs</i>	9
<i>Non-allowable expenses as an employee of CUL</i>	10
<i>VAT on expenses</i>	10
<i>Insurance</i>	10
<i>VAT on CUL invoices</i>	10
<i>Continued use of your limited company</i>	10
<b>Legislation: Need to Know</b>	<b>12</b>
<i>Current legislation on travel and subsistence benefits</i>	12
<i>Employment Agency Regulations (opting in/out)</i>	13
<i>Agency Workers Regulations</i>	13

IR35 Issues	16
<i>IR35 basics</i>	16
<i>New IR35 legislation affecting independents working in the public sector</i>	17
<i>Deciding your IR35 status</i>	17

# Terms of Employment

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The terms and conditions of employment are more or less standard for all payroll umbrella companies.

You become an employee of the umbrella company and not a director or shareholder, unlike when working through your own limited company. You will receive your income as salary (plus expenses if applicable) and not as dividend.

Your contract of employment is with the umbrella company and not with the client or agency. The terms of your contract of employment are largely in line with the terms of any other contract of employment (e.g. disciplinary, health and safety etc) but with certain differences to take account of the unusual circumstances of employment by an umbrella company.

## Contract of employment

When working through an umbrella company, you work under an 'overarching' contract of employment which is worded to provide continuous employment covering multiple assignments for different clients at different temporary locations so that you may claim certain travel and subsistence expenses. This is explained in greater detail below.

As a matter of good practice you are expected to work on the assignment until the assignment is ended and to complete it to the client's satisfaction. To do otherwise would jeopardise your own reputation.

## Provision of work

Umbrella companies do not provide work-finding services of any kind. Although you are an employee of the company, you will be paid only when you are on assignment. You have no obligations to the company between assignments and you are not obliged to keep yourself available for work between assignments.

The onus, therefore, is on you to find your own work, and we will normally be very happy to provide the framework within which you can operate. However, CUL is under no obligation to accept work for you if the terms are not acceptable to us.

If, after a period of three months following the end of an assignment, or sooner if requested, you are not imminently about to start a new assignment, we will notify HMRC that you have ceased employment and issue a P45. You would of course later be able to return to CUL if you wished.

## Identity

We are required to carry out identity checks for all employees. If you are not an EU national, you will be required to supply us with certified copies of your visa and work permit.

## Professional capability

It is your sole responsibility, and not our responsibility, to verify whether the work proposed under an assignment is suitable for you, and your placement on an assignment will not be based upon any representation made by us in relation to the work involved.

You are not entitled to subcontract any part of the services being provided to the end client without the agreement of all parties concerned.

## Employment agency regulations

If working on an assignment through an agency, we would expect you to give us authority to opt out of the Employment Agency Regulations. Please see page 12 for more information.

## Place of work

In legal terms, your 'permanent place of work' will be our company offices, although we would not expect you to attend our offices at any time. Your 'contract site' will be the location where the client has asked for you to provide your services. This arrangement determines the client's premises as a 'temporary workplace' and therefore enables travel and subsistence expenses, other than commuting between home and work, to be claimed (see page 7). There may, of course, also be occasions when it is appropriate for you to work from home.

## Working hours and rest periods

Because you will always be working away from CUL's offices, you will not have any basic hours of work set by CUL. You will be responsible for regulating your own working time, and for taking appropriate breaks, as arranged and agreed with the client.

## Holidays and other absences from work

Because your employment is not one of full time work and involves working flexible hours, we are obliged to pay you holiday pay based on the number of days that you work. Your entitlement will be calculated every time you are paid and will be separately itemised on your payslip.

Because unexpected absence, or absence due to illness, could result in a breach of obligations owed to the client, it is important that you notify both us and the client promptly on any day you are absent, and that you give your best indication as to how long you will be away.

Your client would normally require you to complete timesheets, and approve them, before arranging to pay you. CUL will pay you on a weekly basis no later than three working days after payment is received from the agency or client in respect of any timesheet.

## Termination of assignments in the case of non-payment by the agency or client

CUL reserves the right to terminate an assignment with immediate effect if the agency or client fails to pay an invoice within 14 days of submission.

In such a case you should not provide any further services until the agency or client satisfies us that they will, in future, meet their obligations for payment.

## Overarching contracts of employment – an explanation

The key issue is that if your contract of employment with the umbrella company were to relate to only a single assignment, the client workplace would automatically become your permanent place of work, and the umbrella company would then not be permitted to claim travel expenses from the agency or client on your behalf. However, please note the final paragraph relating to working in the public sector.

In principle, HMRC permits travel expenses to be claimed only if you are travelling to and from a temporary place of work. However, as a contractor, you would normally work on different assignments in different locations for a limited duration in each case.

To overcome this issue, your contract of employment is worded to provide continuous employment covering multiple assignments, each carried out with different clients at temporary places of work. This form of contract has become known as an 'overarching' contract.

HMRC define a temporary place of work as follows: "A workplace is a temporary workplace if an employee goes there only to perform a task of limited duration or for a temporary purpose. Therefore, even where an employee attends a workplace regularly, it will be a temporary workplace and so not a permanent workplace, if the employee attends for the purpose of performing a task of limited duration or other temporary purpose."

Expense claims for travel are also subject to the '24 month' rule, which stops a workplace from being a temporary workplace, where an employee attends it in the course of a period of continuous work that lasts, or is likely to last, more than 24 months. For this reason you cannot be paid travel expenses once it becomes evident that an assignment will continue beyond 24 months duration.

## Working in the public sector

In April 2017, HMRC introduced new rules for individuals working in the public sector on IR35 assignments. The client location is now deemed to be the individual's normal place of work, and travel expenses between home and the client location can no longer be paid to the individual free of tax and NI. This may negate the relevance of the 'overarching' contract, but umbrella companies do not propose to change the contract wording for these individuals until the implications have been fully considered.

# Getting Paid

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The fees and expenses received by CUL for the work that you undertake on assignment are kept in a ring-fenced 'fund' that is personal to you and devoted entirely to supporting you as one of our 'employees'.

## Your salary

After deducting a small 'margin' to pay our costs, the remainder of your fund will be used for paying your salary and the other costs of your employment.

Certain costs of employing you will be deducted from the fund and paid to the relevant authorities, as follows:

- Employer's National Insurance (to HMRC)
- Employer's 'automatic enrolment' pension contribution (to NEST). See below.

Certain expenses relating to you will be deducted from the fund and either paid out on your behalf or itemised separately on your payslip:

- Personal pension contributions – allowable by HMRC under a salary sacrifice scheme and paid out on your behalf
- Childcare vouchers – allowable by HMRC under a salary sacrifice scheme and paid out on your behalf
- Travel and subsistence expenses – free of tax (if allowable and appropriate). See page 7.

## Method of payment

The amount we pay to you will be made up of four component parts:

- Basic pay - this is calculated on the basis of a standard 7 hour day paid at a rate equivalent to the national minimum wage (2017/18 – £7.50 per hour).
- Holiday pay - this is based on the number of days worked (calculated at national minimum wage rate), as explained above.
- Bonus - this is the balance of the amount available from the monies generated by you from your assignment and paid by the client to us. The amount will fluctuate depending upon what, if any, expenses are paid out by CUL on your behalf, by way of salary sacrifice.
- Expenses - the payment of expenses free of tax depends on the nature of your work (see page 6).

Although calculated as described above, the basic pay and bonus are brought together as a single figure on your payslip and referred to as 'pay'. Holiday pay and expenses are itemised separately.

## Employer's National Insurance

This is calculated as 13.8% of weekly gross salary above £157.

## Automatic enrolment pension contributions

Under new legislation now in force, all 'eligible jobholders' must be enrolled into, and must contribute into a qualifying workplace pension scheme from no later than the fourth month of employment. The employer must also contribute into the scheme. However, no deductions will be made under Auto Enrolment until three months after CUL's staging date of 1st January 2018 at which point all existing employees must contribute to the scheme. New employees will be enrolled into the scheme three months after their start date.

CUL will be enrolled with the National Employment Savings Trust (NEST) for Auto Enrolment purposes. For 2017/18 the minimum total contribution is 2% of qualifying earnings, rising to 5% in 2018/19 and 8% thereafter.

Having enrolled into the scheme, you do have the opportunity to opt out of the scheme, but under no circumstances must any employer influence such a decision. Details regarding opting out may be found in [www.thepensions-regulator.gov.uk](http://www.thepensions-regulator.gov.uk), and it is strongly recommended that you familiarise yourself with these provisions.

It is therefore vital that you decide whether you wish to be enrolled with NEST or make different arrangements, and make any decision to opt out within the required time frame.

## Personal pension premiums

Contributions to a personal pension scheme may be paid by CUL directly to your chosen pension provider by way of salary sacrifice, which means that you will not pay tax or NI on these contributions. This is entirely at your discretion and by individual arrangement with CUL.

## Holiday pay provision

As an employee, you have a statutory right to be paid annual leave equivalent to 28 days (inclusive of public and bank holidays) in a full year.

Holiday pay will be paid out of your fund and will appear as a separate item on your payslip. The calculation is based on the number of days worked and calculated as 12.07% of your 'basic pay'.

For the record, there are two different ways of treating holiday pay. This may either be withheld and paid when the employee is on holiday, or it may be rolled up and paid on each pay day on account of holiday yet to be taken. CUL has adopted the latter option in order to pay out maximum monies to employees at the earliest opportunity.

## Maternity/paternity pay provision

As an employee, you have a statutory right to maternity/paternity pay if the circumstances arise. This is mainly funded by the state, but it requires some advance planning, and if appropriate you should contact us as early as possible, so we can set this up in our umbrella payroll software. Any employer liability would be paid out of your fund.

# Claiming Expenses

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## Personal expenses for payroll umbrella company employees

It is important that all employees understand the basis on which personal expenses are paid.

Firstly, all expenses must be bona fide expenses permitted by HMRC.

As explained elsewhere, all expenses are paid out of the ring-fenced fund created by each employee from the fees that he or she earns on assignment. After paying expenses, the remaining funds are used to pay salary and the costs of employment (employer's NI, etc). If expenses increase, then salary reduces, and vice versa. However, it is obviously more tax efficient to use available funds first to draw expenses which are untaxed, and then to pay salary which is taxed.

## Claiming expenses – the mechanics

As in any company scenario, particularly in the professional field, there is a distinction between the fees and expenses that a company charges to its clients, and the salary and expenses that a company pays to its employees.

However, at this point you will also appreciate that as far as fees charged to a client and salary paid to an employee are concerned, an umbrella company is unusual. Firstly, the employee negotiates the fee with the client, even before he or she starts working for the company, and then almost the entire income earned by the employee is preserved in a ring-fenced 'fund' for the benefit of that employee and used to pay his or her salary and all other costs of that employment.

As far as claiming expenses from the client is concerned, the agreement with the client as to what expenses may be charged is also negotiated in advance by the employee, again acting on behalf of the umbrella company. Having negotiated what may be charged, the normal arrangement then is to use the client's own expense claim form to claim agreed expenses, or to set out the expenses in a format acceptable to the client. Details of the expenses actually claimed are then emailed by the employee to CUL as soon as available, so that CUL may charge the client and the client then pay CUL (but see below if working through an agency).

As far as paying expenses to the employee is concerned, the expenses that may be paid free of tax and NI are determined entirely by HMRC regulations. In particular, it may be that the payment of certain expenses has been negotiated with the client but that these expenses may not be paid on to the employee free of tax and NI. This means simply that the 'fund' available to pay salary is increased.

You should claim your expenses directly from CUL using a suitable expense claim form (we are currently developing

an electronic version), and you should attach or email scanned copies of invoices or receipts as appropriate.

## Claiming expenses – working through an agency or provider

Many of the larger agencies have well developed systems whereby they 'automatically' charge clients agreed fees and expenses based on the timesheets that you complete. Often these agencies will then 'self-bill' the umbrella company (i.e. create an invoice from the umbrella company to themselves) and then email this to the umbrella company followed by payment within a few days.

Each agency operates a slightly different system, and you will need to follow their guidance.

## Travel and subsistence expenses

Under new legislation introduced with effect from April 2016, if you are working under an IR35 contract, or if you are working under the 'supervision, direction and control' of your client (see [page 23](#)), you are not permitted to receive travel expenses free of tax in respect of travel to and from your client. However, if exceptionally you travel to a location that is not your normal client workplace, you may receive payment of these expenses free of tax.

If you are working under IR35, you may still negotiate for CUL to charge the client for regular travel expenses, but these will be taxed in the same way as and together with the rest of your salary. Alternatively, of course, you may be able to increase your daily rate to compensate for not claiming expenses.

On the other hand, if you can demonstrate that your assignment does not come under IR35, that you are not working under the supervision, direction and control of your client, and that the assignment will not last for more than 24 months, and if the client accepts this, then you may be paid travel expenses without deduction of tax.

## Charging travel expenses to and from home

Although you become an employee of CUL, the new rules define your normal place of work not to be at CUL's offices but at your client's location, where you might expect to spend more than 40% of your working time. This means that you may not be reimbursed, free of tax, for the cost of travel between your home and your client's offices.

If your client is in agreement, there is no reason why you should not agree for CUL to charge for daily travel (and/or any other expenses that they are prepared to pay) in addition to daily fees, but HMRC do not permit these expenses to be paid to you free of tax and NI. Receiving payment for such expenses will increase the size of your 'fund', and therefore the amount available to pay you as salary.

## Charging travel expenses for exceptional journeys

CUL may charge the client for the cost of travel to and from any other location that you need to visit on an exceptional basis, and these expenses may be paid to you free of tax and NI out of your 'fund', whether or not your client has agreed to pay CUL. These claims should relate to actual journeys from either your home or from your client's workplace, depending on your start point.

## Other expenses

You may claim certain other expenses from CUL, including those relating to professional memberships, certain training courses, office stationery, eyesight tests and itemised telephone calls. These may be paid free of tax and NI, and would be paid out of your fund.

Items paid directly to providers:

- Personal pension contributions
- Childcare vouchers

Other expenses supported by relevant receipts and paid directly to the employee:

- Professional memberships
- Certain training courses relating to your current work
- Eyesight tests
- Itemised telephone calls

All expenses, including any amount to be paid directly to a provider, are normally paid at the time of paying the employee. Your fund would need to be sufficient to cover these expenses as well as paying your basic salary and holiday pay at National Minimum Wage, which takes priority. Therefore, a certain amount of planning may be required and appropriate arrangements would need to be made with the provider, particularly in the case of pension contributions.

All claims for expenses should be made directly to CUL and, except for scale rate subsistence claims, should be supported by relevant receipts. However, please be aware that CUL has a responsibility to ensure that all expenses that are incurred are wholly, exclusively and necessarily for the business (i.e. they must be both reasonable and genuine).

## Staying away from home on an irregular basis

CUL will pay the cost of hotel accommodation, and the reasonable cost of meals taken while you are staying away from home, but you must be able to illustrate that you were travelling on business away from your normal place of work.

You may also claim a nightly allowance to cover the cost of personal incidental expenses while you are staying away from home overnight on business. The scale allowance set by HMRC is £5 per night spent away from home in the UK or £10 per night spent outside the UK. This is intended to cover items of a personal nature such as newspapers, laundry and telephone calls home, but if you have been charged for these things on your hotel bill, you should not also claim the scale allowance.

CUL will pay the cost of staying in rented accommodation provided you always return home on days when you are not working. If you choose to stay in the rented accommodation on days when you are not working (e.g. the weekend or holidays) you may claim the cost of rental only for the days when you are working.

If you choose to stay with friends or family, you may pay for the accommodation but must obtain a receipt for the payment, on the basis that the recipient would include the income in his/her tax free 'Rent a Room' allowance of

£7500 (2016/17).

## Subsistence allowances

HMRC allow you to claim for reasonable subsistence, provided you retain receipts to support any claims. Alternatively, if you have not retained the receipts, you may claim HMRC scale rates as set out below. HMRC scale rates are based entirely on journey time and are as follows:

- Journey time of 5 hours - £5
- Journey time of 10 hours - £10
- Journey time of 15 hours (and continuing beyond 8pm) - £25

For further information on HMRC scale rates for subsistence, see <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim30240>

## Mileage

The normal rules for mileage apply to CUL employees.

When you negotiate for the client to pay expenses, you may sometimes agree a mileage rate of either more or less than the HMRC approved rate. You may also arrange for clients to pay the same rate all through the year regardless of when you reach the threshold (see below).

However, you will need to restrict your own claim from CUL to 25p per mile when you reach the threshold, at which point any excess above 25p per mile will go into your 'fund' and be paid to you after tax and NI.

If your client is paying less than the HMRC approved mileage rate, you may claim from CUL the full approved mileage rate for travel to and from other locations that you need to visit on an exceptional basis.

The annual mileage threshold of 10,000 miles in the tax year relates to each employment, as long as the employments are not related and, therefore, if you are working on different assignments through both your limited company and through CUL, you may claim the higher rate (45p per mile) for the first 10,000 travelled for each company.

## Use of mobile phones and other telephone costs

The expense of using a mobile phone may be claimed only if the contract is in the name of a company and if the expense is included in the accounts of that company.

Since your mobile phone contract will not be in the name of CUL, the only way to claim from CUL the cost of telephone calls is to provide phone bills and itemise the calls. For this reason it may be impractical to claim for the cost of telephone bills.

## Non-allowable expenses as an employee of CUL

As an employee of CUL, certain expenses that were permitted for your limited company are no longer permitted as personal expenses:

- Using your home as your office
- Accountancy fees
- Bank charges
- Insurances relating to your limited company
- Mobile phone – see above
- Software

## VAT on expenses

When claiming expenses from clients on behalf of CUL, you should itemise expenses net of VAT and then charge VAT on the total, as in the eyes of HMRC we are providing a service and all fees and expenses must bear VAT. Importantly, one should not charge VAT on top of an expense that already includes VAT.

When claiming expenses from CUL as an employee, the arrangement is different. Here you should itemise all expenses including VAT where applicable, and show any VAT only where it is included. Many expense claim forms guide you through which expense items include VAT and which do not.

## Insurance

As an employee of CUL, you are covered by the following insurances:

- Professional indemnity – limit £1,500,000 (excess £1,500\*)
- Employers liability – limit £5,000,000

You are therefore not required to arrange your own insurance for assignments through CUL. However, you should continue to arrange your own insurance for any work that you do through your own limited company, if applicable.

(\*In the unlikely event of a claim on the PI insurance, CUL would recover the excess charge from the employee's fund. However, let it be said that over a period of 20 years Competex Ltd has not been aware of any PI claim ever being brought upon any of their clients!).

## VAT on CUL invoices

For the sake of clarity, CUL charges VAT on the invoices rendered to your client and accounts for this to HMRC.

Your 'basic pay' will be based on the net amount of the invoice and the VAT liability will be paid to HMRC.

## Continued use of your limited company

You may continue to use your limited company while working through CUL, but you should be careful about the allocation of expenses.

Expenses may be charged to a company and paid free of tax and NI to an employee only if they have been incurred wholly, exclusively and necessarily in the running of the business. This means that expenses relating to your work through CUL may be charged only to CUL, and expenses relating to your work through your limited company may be charged only to your limited company.

The following gives an indication of the type of expenses you may continue to put through your limited company:

- Travel – this must relate to the work of your limited company and could for instance relate to interviews for future work
- Mobile phone charges
- Charitable donations

Be aware that you would benefit from charging such expenses to your limited company only if your limited company has retained disposable income or if there was the prospect of acquiring disposable income at some time in the future. However, to avoid increased accounting charges, you may prefer to keep a separate record of these expenses and charge them to your limited company as and when it becomes active again.

# Legislation: Need to Know

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## Current legislation on travel and subsistence benefits

Prior to April 2016, all freelance workers were able to claim tax relief on relevant travel and subsistence expenses.

With effect from April 2016, freelance workers, whether operating through an umbrella company or a limited company, have no longer been permitted to claim tax relief on travel and subsistence costs in respect of travel to and from the client's premises if their contracts are deemed to be caught by the IR35 legislation, or if they are under the supervision, direction and control of their client.

However, if you travel to attend a one-off business meeting at a site you don't usually visit, you will be able to claim the travel costs associated with attending the meeting.

In circumstances where tax relief is no longer available, you may still arrange with the client for us to recharge travel and subsistence expenses on your behalf, but when paid to you these expenses will be taxed together with your salary. Alternatively, of course, you could increase your charge-out rate to cover the extra cost.

Travel and subsistence includes:

- Train and bus fares
- Mileage
- Meals
- Hotels
- Congestion charges
- Car hire
- Parking
- Rented accommodation
- Air fares

If your client were to arrange and pay directly for your travel and hotel accommodation there are P11D 'benefits in kind' issues which arise so we would not recommend this.

### Supervision, direction and control (SDC)

HMRC define 'supervision, direction and control' in the agency legislation as follows:

- Supervision over the manner in which the worker provides the services is the action or process of watching or overseeing what a person does or how something is to be done. If a person checks or has the right to check the work that the worker is doing to make sure it meets a required standard, the manner in which the worker provides the services is subject to supervision. Supervision can involve helping the worker develop their skills and knowledge.
- Direction over the manner in which the worker provides the services is making a worker do their work in a certain way by providing them with instructions, guidance, or advice as to how the work must be done. Someone providing direction will often co-ordinate how the work is done as it is being undertaken.
- Control over the manner in which the worker provides the services is telling or instructing a worker about how they do the work. Control over how the person does work also includes someone having the power to move the person from one job to another. If someone can say “don’t do it like that” or “do it like this” then they have a right of control as to the manner in which a person works.

Only one of these items has to apply to be considered under SDC, and for travel expenses not to be paid free of tax.

## Employment Agency Regulations (opting in/out)

These regulations affect the relationship that you and we have with the agency, and the relationship that the agency has with the client. By default both you and CUL are opted in to the regulations, meaning that the agency must pay our fees for the work you do for the client regardless of whether they have been paid by the client. There is therefore a degree of protection if we are opted in.

However, if we are opted in, the agency becomes involved in laborious compliance work, and for this reason they would normally be reluctant to offer assignments. Therefore it is usual for interims and senior independent professionals to opt out of these regulations.

This is done by signing a declaration before being introduced to the client, and you may do this on behalf of Competex Umbrella Ltd. The agency will assist with the documentation.

## Agency Workers Regulations

In principle, the Agency Workers Regulations give all ‘agency workers’ the right to the same basic working and employment conditions that they would have received if they had been employed directly by the client in the same job, regardless of pay or position.

In brief, the regulations state that:

- If you are an ‘agency worker’ you have a right after 12 weeks service with an client to equal pay and equal working hours, rest breaks and holiday provisions, and the right to paid time off for ante-natal appointments, that a ‘comparable’ permanent employee of your client receives.
- These 12 weeks do not have to be continuous.

## Whether you are in scope or out of scope

In order to give a fuller understanding of the issues, the explanation below sets out the circumstances in which a worker may be treated as being in or out of scope of the Agency Workers Regulations. An explanation is also given of the Swedish Derogation Model of contract which you may read about, but which is not applicable here.

Because of the nature of your work (e.g. you are not an agency nurse or fruit picker), you are not paid between assignments, and therefore your contract of employment is worded accordingly and such that you are in-scope of these regulations.

This means that, as your employer, CUL has a responsibility to ensure that you receive pay that is comparable to that of a comparable permanent employee. However, in truth, the Agency Workers Regulations have limited application to interim managers and other independent professionals since their daily rates of pay invariably compare well with the permanently employed colleagues they meet on assignment.

### In scope

Workers are in-scope and entitled to equal treatment if they are supplied through temporary work agencies (TWAs), even if they supply their services through a payroll umbrella company. These workers invariably work under the client's direction or supervision.

In these cases, the client and the umbrella company have a duty to ensure that these workers receive comparable pay and employment rights to comparable permanent employees of the client.

### Out of scope

Workers are out of scope and not entitled to equal treatment if they operate through a payroll umbrella company using the Full (or permanent) Employment Model, known as the Swedish Derogation Model (see below). These workers are out of scope for equal pay treatment, but they remain entitled to equal treatment for rest breaks, holidays etc.

In these cases, neither the client nor the umbrella company has a duty to ensure that these workers receive comparable pay, or employment rights comparable to those of permanent employees of the client.

## The Swedish Derogation Model - an explanation

When the Agency Workers Directive was negotiated at EU level a Swedish delegation negotiated a clause that said:

Where 'agency workers' are employed on a permanent contract by a temporary work agency, and receive pay between assignments, the Agency Working Regulations rights to equal pay for an agency worker no longer exists.

To qualify as being 'out of scope', these workers must therefore be employed by an umbrella company and work through a temporary work agency, and their contract must provide for full, permanent employment whereby they receive equal treatment for hours, rest breaks, holiday entitlement, and time off for ante-natal appointments. They do not receive the right to equal pay; however, most contractors are engaged in work where there are no comparable workers and therefore equal treatment cannot apply, or where they are already being paid more than comparable workers.

There are three conditions for the Swedish Derogation Model to apply correctly:

- A permanent contract of employment between the umbrella company and the temporary work agency must be in place before the start of the agency worker's first assignment, and the employment must be genuine. However, this has now been clarified by the courts to mean that every time a new contract is signed with the client or an amendment to a contract is signed, this counts as a 'first' assignment. This means that the Swedish Derogation Model needs only be in place from the start of the latest assignment with the client.
- An umbrella company that employs freelance workers using the Swedish Derogation Model will have a legal obligation to pay these workers between assignments a minimum amount for no less than four calendar weeks. The minimum amount that can be paid is 50% of the worker's average basic pay for the last 12 weeks, or at least the national minimum wage. If you are employed under a Swedish Derogation Model contract then your employment will normally be terminated by the umbrella company after four weeks if there is no further work.
- The temporary work agency must take reasonable steps to seek suitable further employment for the worker when their assignment ends.

In truth, the Agency Workers Regulations have limited application to interim managers and other independent professionals since their daily rates of pay invariably compare well with permanent employees.

# IR35 Issues

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## IR35 basics

The IR35 legislation was originally designed to prevent company directors from paying themselves a minimum salary and the rest of their income as dividends.

The regulations state that if your work falls under IR35, then 95% of the fees you earn (less certain allowable expenses, which include pension premiums) have to be paid as salary to you, the person who has carried out the work. The remaining 5% may be used by the company to cover expenses. However, this 5% allowance has now been removed for individuals working in the public sector under IR35.

IR35 legislation requires evidence to be considered covering several factors, with the actual working practices being more important than the contractual agreement. Considerations include, but are not limited to:

- Control – to what extent the freelance worker is told how to undertake the work
- Substitution – whether the freelance worker (or umbrella company) can send someone else to deliver the same outcome
- Mutuality of obligation – for the client to provide work and for the freelance worker to complete it
- Financial risk – whether the freelance worker (or umbrella company) are in business in their own account
- Part and parcel of the hiring firm – the extent to which the freelance worker is treated as an employee of the end client

As a general rule, if your assignment is project-based or is consultancy work, you might expect your contract to fall outside IR35.

As a general rule, if your assignment is time-based and you are doing the sort of work for your client that would normally be done by an employee of your client, then you might expect your assignment to fall under IR35. So if you are working on maternity cover, or replacing a manager or director who is otherwise absent, your assignment will normally come under IR35.

You must make a decision for every assignment as to whether it falls within IR35 or not, and apply the legislation accordingly.

However, the rules have changed for those working in the public sector (see below).

## New IR35 legislation affecting interims working in the public sector

From 6 April 2017, all public sector departments (and those organisations in the charity/not-for-profit sector that are subject to the FOI Act) will be responsible for assessing the IR35 status of the freelance workers they hire. If it is judged that a freelance assignment in the public sector falls within IR35, it will no longer be viable to receive gross fees into a limited company, due to new taxation rules that have made it extremely onerous for all concerned.

The easiest option in this case will be to work through a payroll umbrella company.

This is explained in more detail in the Competex Umbrella guide [Contracting in the Public Sector: Limited or Umbrella?](#)

## Deciding your IR35 status

If you are convinced that your assignment falls outside IR35 but your client decides otherwise, the onus would be on you to fight your case.

The new [HMRC ESS tool](#) is available to test your IR35 status and, if you are relying on this, you should keep a copy of the result and be able to demonstrate that you have answered the questions truthfully if challenged by HMRC. Alternatively, there may be occasions when it is appropriate to request a legal review of your contract and working practices.

Be aware that many clients may be reluctant to state that they have no right of supervision, direction or control over the freelance workers that they employ, or that they relinquish any right that they could have. Therefore, most freelance workers in the public sector, whether working through a payroll umbrella company or through a limited company, will be told that they are working under IR35 and will not be able to claim tax relief on travel expenses to and from work while on these assignments.

Please be aware that if we are found to be reclaiming expenses incorrectly on your behalf whilst you are working on assignment under IR35, then HMRC advise that the expenses will be reclassified as income, and tax and NI will be due on the income. Furthermore, they could at the same time instigate an unwelcome investigation. It is therefore extremely important that every contract is reviewed to assess whether the IR35 rules apply.



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