

OFF-PAYROLL WORKING RULES

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From April 2020 the responsibility for determining whether engagements with individuals who provide their services through an intermediary (typically a “PSC”) are within the off-payroll working rules shifts to the client for engagements in the Private Sector, with the burden of operating PAYE and collecting National Insurance Contributions (“NICs”) falling on the relevant “fee payer” in the work supply chain.

Although it is encouraging that HMRC have reconfirmed that it **does not intend to** carry out **targeted campaigns** into previous years when individuals start paying employment taxes following the reforms, we expect that HMRC will take a **robust approach** to the enforcement of the new rules.

There is an enormous amount of work to be done across the private sector to ensure that medium/large businesses who are dependent on a flexible workforce are ready in time for the changes in April 2020.

Status determination and communications

When clients have determined an individual’s status for the off-payroll working rules, the client will be required to pass the determination to the party they directly contract with, as well as the individual worker. Significantly, clients will also need to **provide reasons** for the determination.

It is hoped this will be an incentive to clients to take care in making determinations - reducing the risk of “blanket” assessments and limiting status disputes.

Businesses must therefore adopt internal policies to make proper status determinations for engagements and communicate these to individuals and their contract counterparties effectively.

HMRC promise plenty of guidance, targeted communications as well as an improved “check employment status for tax” (CEST) tool to be rolled out over the summer and coming months to help businesses get ready. It is perhaps disappointing that this guidance is not yet available, if HMRC expect businesses to be ready in time.

Although new guidance will be critical to enable clients to make a proper status determination, if they are to be ready in time, businesses should start to risk assess affected engagements now.

Businesses will need to make sure that the determination process is transparent, reasonable and that decisions are communicated to individuals swiftly, clearly and consistently.

Status disputes

Where an individual disagrees with a status determination made by a client, HMRC believes that “real time” dispute resolution will occur more effectively if the resolution process is conducted directly between the client and the individual, rather than with HMRC. The legislation therefore imposes a statutory minimum client-led dispute “process” to try and create a level playing field for dispute resolution across all client engagements.

It is vital that businesses get to grips with the minimum legislative obligations so that they can deal with any disputes in a compliant way.

Taking reasonable care

If an entity in a work supply chain fails to take reasonable care in applying the rules, leading to a failure to operate PAYE and collect taxes due, it is intended that in certain circumstances the liability for unpaid taxes can move up the supply chain, potentially leaving the first agency or client to foot the bill, even in circumstances where the first agency or client have themselves taken reasonable care.

Although HMRC have stated that the rules are not designed to punish cases of “genuine business failure” there is clearly an incentive for clients to keep supply chains as simple as possible and to deal only with “trusted” agencies.

Cost implications

The changes in the rules may inevitably have cost implications for different parties in the supply chain, although this receives little attention in the consultation documents. Affected parties may need to take steps to renegotiate contracts and fee arrangements now to try to mitigate disruption to the workforce in April next year.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers address the new changes in the law. If you or your organization would like more information on this or any other employment issue, please contact an attorney in the Employment and Labor practice group.

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