

FCCGB HR Forum

Employment Law Changes

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We will cover

- Discrimination cases
- Disciplinary and dismissal cases
- Future developments

01

Discrimination cases

Is a belief that sex is set at birth a protected belief?

Mackereth v Department for Work and Pensions

Doctor engaged to carry out health assessments for the Department for Work and Pensions.

Refused to address transgender patients by their chosen pronoun based on his religious beliefs.



Vegetarianism, veganism, ethical veganism - protected beliefs?

Conisbee v Crossley Farms Ltd

Casamitjana v The League Against Cruel Sports



Suspension

London Borough of Lambeth v Agoreyo

This case concerned allegations of breach of contract pursued in the civil courts following the Claimant's suspension.

The Claimant alleged that her suspension amounted to a breach of the implied term of trust and confidence.

County Court - no breach.

High Court - breach.

Court of Appeal - no breach.



Covert recordings

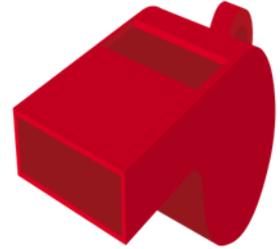
Phoenix House v Stockman



It transpired during the course of employment tribunal proceedings that the Claimant had covertly recorded an internal meeting. The Respondent, having lost on liability, sought to have compensation reduced to nil on the grounds that, had it known about the covert recording at the time, the Claimant would have been dismissed for gross misconduct.

Whistleblowing and reasons

Royal Mail Group Ltd v Jhuti



Which reason is important in disclosure cases - the hidden reason or the invented one?

Supreme Court: the hidden reason

April changes (1)

Statements of Particulars



- Employees and Workers
- Day 1 right
- New timescales
- Additional information required

Holiday Pay Averages



Where averaging is required:

- Period will increase from 12 to 52 weeks
- “No remuneration” weeks still to be disregarded
- 104 week back-stop

April changes (3)



Termination
Payments and NICs



Agency Workers



Information and
Consultation



Increase in
Limits



IR35 REFORMS: THE PRACTICALITIES

12 March 2020

Rob Woodward, Associate Director BDO

IDEAS | PEOPLE | TRUST



IR35 REFORMS - INTRODUCTION

Current landscape



Plethora of complex new rules in recent years



Current and on-going risks with directly engaged workers



IR35 is a significant area of HMRC focus - only 10% operate PAYE/NIC under IR35 that should do



Engaging a worker via a UK company or LLP (ie the intermediary) will limit the risk, provided the engagement arrangements are robust

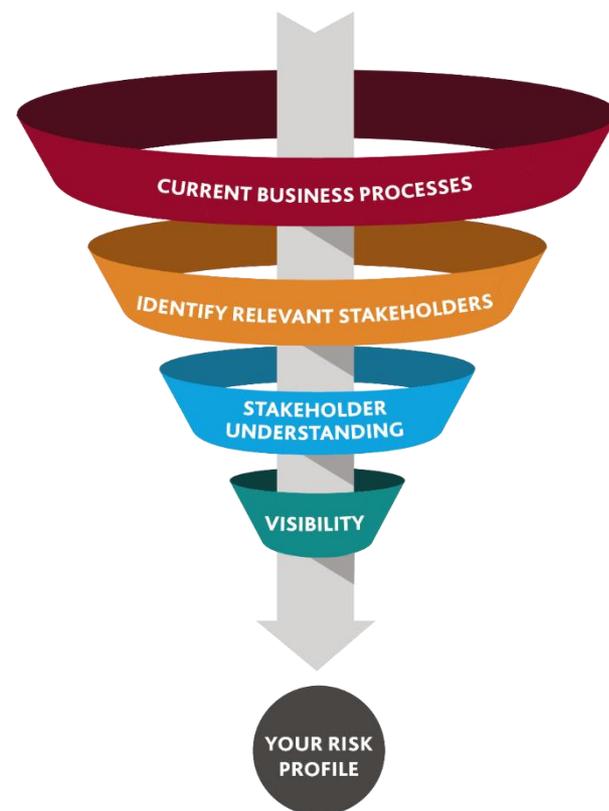


HMRC will always scrutinise contractual arrangements



IR35 REFORMS - INTRODUCTION

- ▶ New responsibilities from 6 April for large and medium businesses
- ▶ Light touch to penalties for 2020/21 (but tax and NIC still has to be paid correctly)
- ▶ Risks from workers engaged through:
 - Personal service companies (limited companies)
 - Self-employed
 - Agency workers
 - Directors
 - Overseas companies / agencies
- ▶ How are you managing and tracking the risks?
- ▶ Could you prove you are taking ‘reasonable care’?



IR35 REFORMS - THE CONCEPT

1.

An individual ('worker') personally performs, or is under an obligation to personally perform, services for another person ('the end user/engager')



2.

The services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (more often than not a PSC)



3.

Having regard to the terms of the contracts and the actual arrangements



4.

The end engager must assess the employment status and provide the (SDS) to the PSC and the next one in the chain



5.

Fee Payer (entity closest to the PSC up the chain) - if the SDS is for a deemed employee must operate payroll and deduct PAYE/NIC



6.

There needs to be an appeals process



IR35 REFORM - PRACTICALITIES AND CONCERNS



Who is in scope?



Identifying contractors



Decision making



Payroll systems



Contract review

IR35 REFORMS - PRACTICAL CONSIDERATIONS

Who is in scope?

1.

PSC - an “intermediary” - a PSC, LLP, where the worker owns $\geq 5\%$ or more of the ordinary shares, or a partnership where the partner as a worker is entitled to 60% or more of profits



2.

Applies to non-UK end engagers if there is a UK intermediary performing services in the UK and end engagers have a UK presence



3.

Small companies exemption



IR35 REFORM - PRACTICAL CONSIDERATIONS

Identifying contractors through limited companies - understanding the nature of engagement and whether PSCs involved in the labour supply chain

01

Are sufficient sources of information and tools available?

How reliable is CEST?

Are processes in place to communicate status determinations?

02

Deemed employee: the fee payer will have to operate payroll and deduct PAYE and pay Employers NIC 13.8%, and Apprenticeship Levy at 0.5%

RTI submission includes flag for 'deemed employee'

03

Contractual considerations - who is liability for additional 'employer' costs under contract

Is the fee agreed with PSC inclusive or exclusive of 'employer' costs?

Will fee payer has ability to pass on their 'employer' costs under contract?

04

OTHER EMPLOYMENT TAX TOPICAL MATTERS

- ▶ Termination payment changes affecting employer's NIC
- ▶ Matters arising from the Budget
 - Sick pay changes
 - Employee NIC allowance increases
 - Employer allowance increases
 - Employer NIC relief for hiring veterans
 - National Living Wage increases
 - Electric company cars

QUESTIONS AND ANSWERS



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