

Schools Forum			
REPORT TITLE	Off Payroll Working In The Public Sector - IR35		
KEY DECISION		Item No.	6
CLASS		Date	16 March 2017

1. Purpose of the Report

To brief the Forum on the reform of the legislation taking effect from 6th April 2017 relating to contractors working via intermediaries and providing their services to public authorities. Often known as IR35 in the public sector.

2. Background

- 2.1 IR35 is the name given to the government's intermediaries tax legislation which focuses on identifying 'disguised employees', being individuals who are providing services to a client through an intermediary company, such as their own personal service company (PSC), but whose relationship with the client would be one of employment were it not for the presence of the intermediary. Where this is the case, the existing IR35 rules require the intermediary to deduct and make payment of the equivalent taxes as would be payable by and for an employee.

3. What is the change?

- 3.1 The main change is that the employer will be required to determine whether the IR35 rules apply to agency workers, interims and contractors. The employer will also become responsible for carrying out an employment status test. Where this test is met, the organisation (LBL employer or supplying agency) that pays the worker becomes responsible for deducting and paying relevant tax and National Insurance, in the same way as for direct employees of the Council. This will mainly affect workers who operate as a PSC.
- 3.2 Off payroll workers can be engaged in the following ways:-
1. An agency worker or interim contractor through an agency
 2. A worker that is invoicing the school directly

4. What are the implications for Lewisham Schools?

- 4.1 HMRC may impose financial penalties if workers are not designated correctly therefore it is important that employers fully understand the legislation and carry out the employment status test to help ensure that the worker is paying the correct amount of tax. It is likely that HMRC will take any necessary action against the employer, however the employer may decide to pass any penalty on to the relevant school if the school has made an incorrect judgement. A digital employment status tool is now available at the following link: - <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>
It is important for school staff to be familiar with the tool and how it works.
- 4.2 Employers may find that where a person has been engaged via an agency but is providing services through their own PSC, the agency increases their rate to the employer. This is because they will be responsible for employers National Insurance contributions.
- 4.3 The most important fact is that the employer is responsible for determining whether the work falls inside IR35 legislation, even if it is then able to pass the responsibility for deducting the taxes on to an agency.
- 4.4 It is very likely that most interim/contractor roles required in schools are those that can and are carried out by direct employees and will fall within IR35. For example, a job would generally have to be time limited, with specified work and specified outcomes to fall outside of IR35. There is also an expectation that the work would be paid for on completion rather than on a regular basis.

Recommendation

5. It is recommended that schools become familiar with the employment status test tool but that they confirm their findings with Schools' HR staff for absolute clarity and to avoid errors.

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