

OFF-PAYROLL WORKING IN THE PRIVATE SECTOR - EDUCATION

What it means for educational organisations

Not unexpectedly, the changes that were introduced to the public sector regarding off-payroll workers have been widened to the private sector and will take effect from 6 April 2021.

You may be aware that from 5 April 2017 the new rules on off-payroll working came into force for public sector engagements. The new regime had major implications for public sector academies and schools that contracted with individuals providing their services to the schools via their own limited company.

What do the changes mean?

For private sector educational organisations which are not already subject to the 2017 public sector rules, when your educational organisation is engaging with individuals, consultants, contractors or freelancers who provide their services through their own company, your organisation will be responsible for deciding if tax should be deducted at source (e.g. PAYE). So, if you determine the individual is regarded as an employee and is providing their services directly to your organisation, then you will need to deduct income tax and employee NICs and pay employer NICs even when the services are provided through a personal service company.

What if our organisation engages with agencies?

If the organisation is paying an agency that has the contract with the individual's personal service company, then the agency would be responsible for the deduction of these payroll taxes, but you, as the end user of the services, must tell the agency, as well as the contractor, whether the off-payroll working rules apply.

What if our organisation engages with individual contractors?

Where your organisation engages directly with a contractor (rather than with a contractor's personal service company), there will be no changes to the existing rules and your organisation will continue to be responsible for determining their employment status.

Will these rules apply to all educational organisations?

These new off-payroll worker rules will apply to medium and large organisations, and an exemption from these rules is currently available for small organisations.

The main tests for determining whether an organisation is "small" are taken from the Companies Act 2006. To be treated as small two of three conditions need to be satisfied:

- Annual turnover of not more than £10.2 million
- Balance sheet total of not more than £5.1 million
- Number of employees not more than 50

An unincorporated organisation will be considered small if its annual turnover does not exceed £10.2m (known as the 'simplified test').

What should I do now?

If these changes apply to your organisation (i.e. you are not classified as a small organisation) then you should review all relationships and contracts held with contractors, freelancers, consultants etc. to determine whether you should be deducting tax at source.

HMRC recommend that organisations use the 'Check Employment Status for Tax' ('CEST') service to determine the worker's status. This can easily be found on the HMRC website although there is some doubt whether the current version of the tool accurately reflects the rules.

An expert opinion may need to be sought on the employment status of some engagements taking into account relevant case law and other relevant guidance.

If, after this review, you conclude that tax should be deducted at source from those invoicing via a company, then your payroll provider will need to be informed. The reporting requirements are different so a new PAYE scheme may be needed.

The organisation will also need to decide which party is bearing the cost of the employer's National Insurance contributions and apprenticeship levy. If this is to be paid by the organisation, will it expect to pay a reduced day rate to the contractor to cover this? Will the contractor be willing to accept this?

The draft legislation and recently released HMRC guidance also states that there will be a legal requirement for each organisation engaging contractors to develop and implement a process to resolve disagreements with off payroll workers. This could be a drain on management resources if managed internally or costly if outsourced to external HR consultants.



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What about peripatetic teachers?

Peripatetic teachers, or sometimes known as itinerant teachers, have historically been an area of complexity in respect of determining employment status.

For example, school music teachers or sports coaches are sometimes engaged as self-employed personnel. However, where they are paid directly by the school and the teacher carries out their duties on the school premises there is a risk that they could be considered employees of the school.

The off-payroll worker legislation to apply from 6 April 2021 will need to be applied to such engagements where these teachers provide their services via a limited company to your organisation.

When determining the employment status of peripatetic teachers providing services via their own limited company careful consideration of both the HMRC CEST tool and the specific HMRC guidance for peripatetic teachers that continues to exist for determining the employment status these individuals is required.

How can Moore Kingston Smith help you?

Moore Kingston Smith offer an off-payroll worker solution drawing on our experience with the existing public sector regime and dealing with HM Revenue & Customs on employment status issues generally.

To find out more about Moore Kingston Smith's services, please visit:

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