



# Further Erosion of Locum Employment Status



**A recent Employment Tribunal case has highlighted concerns over locums' employment status issues when working through personal service companies. The case related to whether a GP, working through a company, was a 'worker' and had workers' rights. However, it also has implications regarding IR35 and off-payroll working tax regulations.**

In this case, the GP provided services to an out-of-hours provider through a limited company.

The terms under which the GP worked meant that they were not obliged to accept any shifts. However, the out-of-hours service had regulations for allocation of shifts and, in reality, the GP tended to work to a regular pattern. The GP also took time off whenever they wished and they also worked as a locum GP for other medical practices using their company.

The agreement also allowed the GP to appoint a suitably qualified substitute.

Unfortunately, the relationship between the GP and the out-of-hours service broke down; one of the reasons being that the GP had swapped shifts without permission. Eventually the out-of-hours service declined to offer the GP any further work.

A claim was made by the GP for unfair dismissal, discrimination, wrongful dismissal and for unpaid holiday pay.

The GP was successful in this claim based on the tribunal's review of the factors relating to the engagement of the GP. These included the fact that the GP was personally required to carry out the duties and supply their own indemnity insurance. The out-of-hours service would also supply any drugs etc. required in this work.

The out-of-hours service appealed on the grounds that the contract was with the GP's company not the GP and therefore there could not be an employment/worker relationship.

However, the tribunal upheld the original decision and said that the company could not possibly be the contracting party as it was not a GP and could not treat a patient or prescribe medication. The judge also addressed the right of substitution, saying that the contract only allowed for a suitably qualified GP to be used as a replacement, implying that a company could not be used.

This case highlights the importance of carefully reviewing your agreements when contracting with companies, not only to ensure the correct tax treatment is used, i.e. IR35 and off-payroll working but to determine if the person providing the service is a 'worker' and entitled to holiday pay etc.

It also emphasises the importance, when relying on any contractual clauses regarding substitution and lack of mutuality or obligation (the obligation to offer work and the contractor's obligation to accept work), that these stand up to scrutiny and are actually useable. It would also be a good idea to record occasions when they have been used.

Unfortunately this decision will also be a powerful tool in the taxman's armoury when arguing that off-payroll working tax rules apply where the services of a 'suitably qualified GP' are contracted through a company.

If you would like to discuss how this could impact on your practice and whether you need to review if off-payroll working rules need to be applied, please contact Philip Redhead on **01708 333308** or email [philip.redhead@chc.uk.com](mailto:philip.redhead@chc.uk.com) who will be delighted to speak with you regarding this and any other medical tax and accounting matters.