

Introduction

An organisation's talent are not just the workers on the perm payroll. These non-perm workers will often be critical to your talent strategy, when you need more flexibility and specialist skills. How you engage is also essential to your business strategy, as it not only helps get work done, but can also mitigate risk, improve cash flow and ultimately increase the value of the business.

The use of flexible workforce solutions is expected to grow and the channels organisations can use to engage workers are expanding. However, governments are struggling to keep up with regulations and tax laws, which can make compliance challenging. End customers need to know who is working on their behalf, how they are engaged, what are their own responsibility and obligations and what the responsibility of their suppliers.

Getting this wrong not only puts the organisation at risk of significant fines, but also irreparable reputational damage. Organisations who get this right have the opportunity to leapfrog their competitors and become the destination of choice. Not only for their employees, but also for suppliers and their workers.

Disclaimer

This document is intended to be a handy guide for business professionals and workforce service providers responsible for the strategy and management of non-perm workers. It's a general guide, so there will be exceptions. Terminology has been chosen for ease of understanding, not necessarily for its explicit legal meaning. Always seek your own tax and legal advice

	Responsible for Outcome?	Worker category (contracting type)	Who holds responsibility?	Risk level 1-5 (1 = low)	Obligations supplier	Obligations Customer
NON PERM WORKERS Professional & Non-Professional	Responsible for outcome / SOW (supplier holds risk)	Outsourced service i.e. IT, audit, marketing, cleaning	Supplier responsible for work and worker	RISK 1	"Supplier insures work and worker. Supplier provides equipment and is responsible for worker training. Supplier responsible for right to work, tax etc"	Customer responsible for safety and security whilst in customers environment (physical and virtual) including providing training to ensure they are safe and compliant
		Consultant (i.e. big four)	Supplier responsible for work and worker	RISK 1		
		Offshore i.e. IT Help desk	Supplier responsible for work and worker	RISK 2		
		Out of scope PSC i.e. IT Consultant	Supplier responsible for work and worker	RISK 3		
		Sole Trader / Freelance / Gig = (Independent worker)	Supplier responsible for work and worker	RISK 4		
	Not responsible for outcome / staff augmentation (customer holds risk)	Fixed term contract	Direct employment contract end customer	RISK 2	Customer Insures work. Provider insures worker. Customer may provide role specific training as its unique to customer. Supplier may provide professional training. Supplier may or may not provide equipment. Customer responsible for right to work, tax etc supplier may perform checks on customers behalf.	Customer responsible for safety and security whilst in customers environment (physical & virtual) including providing training to ensure they are safe and compliant
		In scope PSC i.e. IT Contractor	Intermediary in place i.e. agency / payroll providing worker contract and treasury service	RISK 2		
		Umbrella	Intermediary in place i.e. agency / payroll providing worker contract and treasury service	RISK 3		
		PAYE temp	Intermediary in place i.e. agency / payroll providing worker contract and treasury service	RISK 2		
		Offshore	Intermediary in place i.e. agency / payroll providing worker contract and treasury service	RISK 5		
Seconded i.e. Lawyer / Accountant		Primary employer responsible for worker	RISK 1			
Freelancer / Gig worker		Independent worker (self employed)	RISK 4			
	Dependant worker also known as Limb (b) worker (self employed)	RISK 3				

* We have not included the HMRC's construction Industry scheme (CIS) as this applies only to Construction Contractors who employ subcontractors within specific construction roles

Considerations:

- Have a process to effectively evaluate who is responsible for the outcome of the work.
- Understand the worker categories your organisation uses and, perhaps even more importantly, will use in the future to get work done.
- Perform a risk analysis of each worker category for your organisation.
- Understand all the risks: regulatory, tax and reputational if you get it wrong.
- Carefully select your suppliers to make sure they are experienced and are upholding their responsibly and obligations. Put in place contracts and a process to ensure they do.
- Train your hiring community so that they know their role, responsibility and the risk to the company if they get it wrong.
- Consider using technology and or a service provider to help you manage the process, give you visibility and mitigate risk.
- Ensure your strategy and process aligns to your organisation's core values and future goals, i.e. experience and supply chain which drives your talent brand value proposition and D&I agenda.

Worker classifications, their legal status & tax obligations	Worker category (contracting type)	Legal classification		Rights Under employment law	Tax obligations
	PSC	Self-employed	They are in business for themselves and enter into contracts with clients or customers to provide work or services.	Employment law doesn't cover self-employed people in most cases because they are in business for themselves. They still have protection for their health and safety and, in some cases, protection against discrimination.	For tax purposes, there is no distinction between the self-employed (i.e. independent contractor) and a 'worker'. The self-employed are obliged to register with HMRC, and to submit annual tax returns to pay income tax and National Insurance Contributions (NICs). PSC's are also required to pay corporation tax
	Sole Trader				
	Freelancer/ Independant				
	Independant worker (self employed)				
	Gig worker	Worker	A 'dependent contractor'. Registered as self-employed but provides a service as part of someone else's business. They generally must carry out the work personally, rather than being able to send someone in their place. Their contract is often not with their own client or customer, but with another party (i.e. a platform).	At least statutory worker rights the National Minimum Wage • Protection against unlawful deductions from wages • Statutory minimum level of paid holiday • Statutory minimum length of rest breaks • Not obliged to work more than 48 hours on average per week, or to opt out of this right if they choose • Protection against unlawful discrimination • Protection for 'whistleblowing' (reporting wrongdoing in the workplace) • Equal treatment if working part-time.	
	Dependant worker Limb (b)				
	PAYE temp	(Agency) Worker	Has a contract with an agency, but works temporarily for a 'hirer'; a person or company with employees. Due to Agency Worker Regulations after 12 weeks they are entitled to the same rights as employees of the hiring company, but it is the agency who are responsible for their pay and administering statutory employment rights.	In addition to worker rights from Day 1, an agency and Umbrella worker also has the same rights as those in the 'worker' category. Additionally, workers have the same rights as colleagues employed by the hiring organisation to access shared facilities and services (such as the canteen or work transport). From 12 weeks, an agency worker has the same rights as colleagues employed by the hiring organisation. However, the clock resets each time they start at a new place of work.	For tax purposes, there is generally no distinction between agency workers and employees. Employers pay National Insurance Contributions (NICs) on behalf of their employees. This is done through the payroll system (PAYE). Employees also pay income tax and NICs through PAYE.
	Umbrella	Worker (in some cases can also be an employee of the umbrella company)	Has a contract with the Umbrella company, but works temporarily for a 'hirer'; a person or company with employees. After 12 weeks, they are entitled to the same basic rights as employees of the hiring company, but it is the Umbrella Company who are responsible for their pay and administering statutory employment rights.		
	Fixed-term contract	Employee	Employees are on a fixed-term contract and have an employment contract with the organisation they work for. Their contract ends on a particular date, or completion of a specific task, eg a project		
	Seconded	Employee / Contractor of provider	Responsibility falls to provider	Responsibility falls to provider	Responsibility falls to provider
	Outsourced				
	Offshore				

Category	Description		
Worker	A worker has a contract or other arrangement to do work or services personally for a reward, but does not have full employment rights.		
Employee	All employees are workers, but an employee has extra employment rights and responsibilities that don't apply to workers who aren't employees.		
Agency Worker	An agency worker has a contract with an agency but temporarily works for a hirer. Agencies can include recruitment agencies, for example 'temp agencies'. Agency workers have a worker's employment rights from day one. After 12 weeks in the job they qualify for the same rights as someone employed directly.		
PSC	Personal services company: Typical model for the engagement of professional contractors either directly or through an intermediary. PSCs operate as Ltd Co which is incorporated by companies. PSC house. A privately held enterprise with one or more employees. It would be expected to hold its own insurance, both public liability and professional indemnity. PSC assignments require the "hirer" to determine whether the assignment is inside or outside IR35 for tax purposes.		
Freelancer	No legal definition. It is often found in media or creative related roles and will typically operate as a PSC or Sole Trader		
Offshore	Work completed outside the country you are registered.		
Risk	Whilst the weighting of our risk score is focused on tax liability for the hirer we have also considered other significant risk factors including complying with agency workers regulations, employment liability and reputational risk.		
		Risk level 1-5 (1 = low)	Risk logic
PSC out of scope	Using HMRC's CEST tool or similar to determine employment status for tax purpose. If "out of scope of IR35" PSCs are responsible for paying appropriate tax.	RISK 3	Hirer and Intermediary hold the risk for accurate determination. Requires robust determination process which shows reasonable care, and governance to ensure status remains accurate throughout assignment. Failure to do this effectively could result in significant tax liability and HMRC fines
PSC in scope	Determined as employees for tax purposes (inscope of IR35) and employers and intermediaries are responsible for payment of tax on behalf of the PSC.	RISK 2	Typically an intermediary withholds tax and pays the HMRC on behalf of the PSC and hirer reducing risk of non payment.
Sole trader	A privately held enterprise run by a single individual. They keep all the business's profits after tax. Would be expected to hold its own insurance, both Public liability and professional indemnity.	RISK 4	Whilst sole traders are exempt from IR35, their is significant co employment risk and will require accurate determination of self employment status over the lifetime of the assignment. There have been multiple cases of inaccurate determinations with HMRC requiring hirers to pay tax in arrears, fines and back pay & contributions to workers.
Umbrella Worker	Works through a company providing accountancy services to contractor the "Umbrella company". Workers can be engaged in a number of ways most commonly the umbrella company acts as employer in a way which is beneficial to the worker.	RISK 3	Umbrella companies provide services which are beneficial to contractors. Many are reputable and will operate compliantly. However, there have been examples of poor practice putting hirer's and workers at risk of underpaid tax and fines from the HMRC.
Freelancer / Gig worker (independent)	A broad description of workers typically working via platforms who enter into contracts with clients themselves.	RISK 4	Risk of inaccurate determination, see sole trader and out of scope PSC. Note recent UK high court judgement confirming Uber drivers are workers not self employed.
Freelancer / Gig worker / dependant (also known as Limb (b) worker)	A broad description of workers typically working via platforms who provide services on behalf of someone else's business.	RISK 3	Worker rights are recognised with tax paid directly to HMRC with worker receiving worker.
PAYE Temp	Traditional recruitment agency contracting model where workers are engaged on temporary PAYE agency worker contracts.	RISK 2	Well established model for the engagement of workers with agency acting as intermediary, paying tax directly to HMRC. Care should be taken to comply with all other agency worker regulations.
Fixed term contract	Employed directly by the employer for a specific period of time and or project as there is no "intermediary" the employer holds responsibility for worker liability.	RISK 2	On perm payroll with employer paying tax directly to HMRC. Hirer has an employment relationship and is therefore responsible for all worker liability which can be an additional risk when compared to using an agency.
Seconded	An individual is on "loan" this can be common for Accountancy / Legal/ Marketing support. Typically the individual will have a clear primary employer and the assignment will be for defined period.	RISK 1	The loaning company is the primary employer, responsible for payment of tax to HMRC and will hold liability for workers employment liability.
Outsourced	The work is outsourced to a supplier who is free to choose how to complete the work. They are responsible for selecting, managing and providing the resource to deliver the work.	RISK 1	The outsourced provider is the primary employer, responsible for payment of tax to HMRC and will hold workers employment liability.
Consultant (i.e big four)	Typically the work will be completed by employees of the provider. The primary employer is clear, they have responsibility for selecting and managing resources to deliver the work.	RISK 1	The provider of the consultant is the primary employer, responsible for payment of tax to HMRC and will hold workers employment liability.
Offshore (SOW)	The work is outsourced to a supplier who is free to choose how to complete the work. They are responsible for selecting, managing and providing the resource to deliver the work.	RISK 2	The provider is the primary employer, responsible for payment of tax and worker's employment liability within the country they operate. There maybe reputational risk if they are found not to be operating responsibly and inline with the values of the "hirer".
Offshore (staff augmentation)	Whilst the work is completed offshore the hirer directly tasks the worker.	RISK 5	As the hirer is responsible for the work/ worker, the hirer needs specialist tax and worker regulations advice to understand their liability and avoid potential un-capped fines, domestically and abroad.