



Guide to Compliance

www.contractorumbrella.com

Guide to Compliance



Dear Recruiter,

Working in recruitment within the temporary contract market, we're sure that you will be aware of Umbrella Companies and how useful they can be. However, you will probably also be aware that there are several hundred operating in the UK and not all of these are compliant with current legislation. If your Recruitment Agency uses a non-compliant company you could leave yourselves wide open to financial penalties from the debt transfer legislation; it was recently reported that one such agency was facing a bill for £10 million!

In order to ensure this doesn't happen to you ContractorUmbrella has put together this guide which will help you put together a compliant preferred suppliers list and, more importantly, explains why the questions that you should be asking are so important. Get it right and you can expect a long and prosperous partnership which is beneficial to all parties involved.

There are a number of companies that review and then 'approve' umbrella companies and the stamp of approval proves that the umbrella company is serious about compliance. However, we would advise that the review should be conducted by trained and certified professionals who are specialists in both tax and employment law.

Needless to say we have put compliance at the very core of our business and we would be more than happy to go through any due diligence process that you may have in place. We can also arrange for a senior member of our team to visit you at your premises to discuss your requirements. For more information please contact a member of our team on 01206 713 680 or email us at agency@contractorumbrella.com.

Kind regards

Lisa Keeble

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Managing Director

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Your preferred Umbrella Company is an employer and therefore has an obligation to ensure that all of its employees have a right to work in the UK. This cannot be confirmed without identification from the individual and evidence of their status; failure to determine the right to work can result in penalties of up to £10,000. Therefore the questions that you should be asking are as follows:

- Please confirm that you processes in place that will confirm the identity of each employee
- Please provide details of the evidence that you require to confirm the identity of each employee
(These should include: a British Citizen Passport or a British Driving licence or a UK issued photo identification card. If one of these cannot be supplied further documentation will be needed to confirm identity and your chosen umbrella company should advise you of this)
- Please provide details of the evidence you require to prove that the employee has a right to work in the UK
(Visa and work permit requirements vary according to the employee's country of origin and also the skills that they will be bringing to the UK; your chosen umbrella company should be aware of the different requirements and should be able to advise you accordingly)
- Will a worker become an employee of your umbrella company before proof of identity and right to work have been received
(The answer to this question should be no)

As your preferred Umbrella Company is an Employer they should provide all new employees with induction material that contains the following:

- A letter of introduction to the Company that confirms that the individual will be an employee and will be provided with a Contract of Employment
- Details of the checks that will be made to confirm identity and ensure a right to work in the UK
- Information regarding disciplinary and grievance procedures
- Information regarding expense claims.
(You should be aware that only those expenses that are allowable under HMRC rules should be processed by your preferred umbrella company; inflated expense claims will lead to higher take home pay and are sometimes used by unscrupulous umbrella companies. Falsifying expense claims is illegal and can lead to penalties and fines)

Each employee of your preferred Umbrella Company should be given a Contract of Employment. This Contract should be what is termed 'over-arching' as this effectively links individual assignments so that there is continuity of employment. You should be asking the following questions about the Contract:

- Please confirm that mutuality of obligation exists in the gaps between assignments
(HMRC believe that, in order for an over-arching contract to exist, there must be an obligation throughout the entire employment and this includes any periods when the individual is not on assignment)
- Please confirm the number of hours of work that are guaranteed and explain how this is monitored
(HMRC believe that employment contracts which guarantee 336 hours work in any 12 month period are likely to be overarching)
- Will the Contract of Employment be terminated when this assignment comes to an end
(The answer to this should be no unless e.g. the end of the assignment coincides with the employee's return to permanent employment or the move to a Personal Limited Company)

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- What period of notice is required to terminate the contract?
- How many days holiday is the employee entitled to? (The current holiday entitlement is 28 days)
- Is holiday pay included in the employees' earnings each week/month?
(The answer to this should be no. This practise is referred to as 'rolling up' holiday pay and is unlawful; holiday pay should be shown as a separate entry on the payslip and should be paid only when the employee has taken holiday)
- Please provide payment details i.e minimum rates and frequency
(An umbrella company is obliged to make regular salary payments to their employees which are of at least minimum wage)
- Please confirm that the Contract of Employment contains details of grievance and disciplinary procedures.
- Please confirm that the Employee is made aware of Health and Safety policies

Umbrella Companies have been targeted by HMR&C in recent years and compliance reviews are common. However, you should be aware that there is a difference between HMR&C examining the business practises of an Umbrella Company and the Company paying for an 'independent compliance review' by an Umbrella Company syndicate. The questions you should be asking for this section are as follows:

- Does your company have a dispensation from HMR&C?
(Having a dispensation is not a guarantee of compliance but it is a good place to start. Although it is just an accounting tool to save the umbrella company time, HMR&C will not grant one without being assured of the Company's compliance. Those granted within the last year will either have been as a result of a review by HMR&C or because the Company is new and has only applied within the last year)
- Does your Umbrella Company or its Directors have any outstanding tax liabilities?
- Does your company promote its services based on tax savings?
(An Umbrella Company cannot 'save' its employees tax and no Umbrella Company can guarantee a higher return than another. The reason for this is that all Umbrella Companies make payment to its employees via PAYE and can only legitimately process those expenses that are permitted by HMR&C)
- Please confirm that your company does not make use of Employee Benefit Trusts or Offshore Tax Avoidance schemes to process payments for your employees.
(Employee Benefit Trusts (EBT's) that were deemed as being for the purpose of tax avoidance were made unlawful by HMR&C in December 2010. If employees live, work and are tax resident in the UK they will be liable for UK tax and therefore any scheme relying on the tax laws of another country will be deemed to be avoidance)
- Please confirm that all payments made to your employees are through PAYE
(An individual working through an intermediary should only be paid via PAYE; if a third party were to pay dividends they would be guilty of contravening the Managed Service Company legislation. If a recruiter were to be found to have encouraged the use of such a service, HMR&C have the power to use debt transfer legislation to force the recruiter to cover any tax liability that may be discovered.)
- Please explain how you validate expense claims
(The Umbrella Company should audit expense claims to ensure that employees are not trying to claim costs that are not allowable. Each companies' processes will differ slightly but you need them to confirm that all expense claims are reviewed and that receipts are required for anything not covered by the Company's dispensation. Receipts should also be randomly

requested from a selection of employees as further verification for claims. They should also be checking to make sure that the employee has not worked at the same location, or will be working at the same location, for 24 months or more. Any expense for travel should be verified by checking the start and end location and confirming that the amount claimed is reasonable for that journey)

- Are expense claims permitted for periods when an employee is not on assignment?
(Expenses can only be allowed for costs which have been incurred wholly and exclusively because of the assignment; costs for interviews for instance could not be claimed as an expense.)
- What do you do if you believe an expense claim is invalid?
(The expense should be disallowed i.e. not processed and the employee should be advised of the fact and the reason why)
- Do you allow expense claims for travel from employees whose intention is to only work on one assignment whilst in your employment?
(The answer to this should be no. Even under an over-arching contract of employment, a single assignment will become a permanent workplace rather than a temporary workplace and therefore expense claims for travel will not be allowable.)

Umbrella Companies will often provide illustrations for potential employees who are unsure how an Umbrella Company works. You should be aware that the calculators used by some Umbrella Companies have been manipulated to show a higher take home pay than is likely. You should ask the following questions to ensure that the information being provided by the Umbrella Company is as accurate as possible.

- What tax code has been used to calculate income tax code due?
(This should be the standard tax code for the current financial year simply as it is the most common and therefore will mean that the calculation provided will be accurate for as many individuals as possible. 2011/2012 the standard tax code is 747L)
- What expenses have been assumed when providing a calculation?
(The answer to this should be none. If an illustration of potential earnings is going to be provided it will not be accurate if it assumes a level of expenses which may not be incurred)
- Is the Umbrella Company's margin included in the calculation and is this clearly shown?
(The answer should be yes)
- Does your calculator state that the figures provided are an estimate of earnings?
(It should)

Payments to Employees

By this point in the process you will have ascertained a great deal about the working practises of your preferred Umbrella Company but you will need to confirm that payments made to individual employees are correctly processed and reported and therefore you should ask some further questions:

- If, for any reason, you are not paid by an agency will your employees still receive a salary?
(In order for an over-arching contract to be maintained there must be mutuality of obligation between assignments which means that a payment must be made each month regardless of whether or not funds have been received from the Recruitment Agency; this is usually at minimum wage)

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- Are expense claims processed if it would result in making a payment of less than minimum wage?
(The answer should be no)
- Do you pay Statutory Maternity, Paternity, Adoption and Sick Pay?
(The Umbrella Company is an employer and therefore must answer yes. They must also confirm that a deduction is not made from employees earnings to fund these Statutory payments)
- Do you pay holiday pay and if so is it 'rolled up'
(The answers should be yes and no respectively)

The Agency Worker Regulations

The Agency Worker Regulations come into force on 1st October 2011 and will affect hirers, recruitment agencies and umbrella companies. You should ensure that any umbrella company you intend to work with has made provision for the introduction of the new legislation.

If your preferred umbrella company is operating a Swedish Derogation Model and therefore has a permanent contract of employment in place with their employees, you should make certain that the contract has a clause that makes employees aware of the fact that they are waiving their rights under section 5 of the Agency Worker Regulations in so far as they relate to pay. You should also make certain that money is not being deducted from employees to fund payment between assignments as this is against both the spirit and letter of the law.

Service Levels

If you are intending to work with an umbrella company you should ensure that you know that their service levels meet your own standards; we would suggest that they have a customer charter in place which detail quite clearly what you and their employees can expect from them.

We'd like to thank you for your consideration for inclusion on your list of recommended Umbrella Companies. We look forward to formalizing working relationships between our two companies and establishing a long and successful working partnership going forward.

If you have any questions about compliance you can contact a member of our team on 01206 713 680 or email us at agency@contractorumbrella.com. Alternatively please visit our website www.contractorumbrella.com.

About ContractorUmbrella Ltd

ContractorUmbrella is one of the largest and most respected Umbrella Companies in the UK. Established in 2002, we are now recognised as being a market leader with several thousand satisfied clients.

ContractorUmbrella is part of the SJD Group of accountancy companies, which includes **SJD Accountancy** who are the chosen firm to over 8,000 contractors working through their own Limited Company, winner of the prestigious Accountancy Age Awards for Excellence and are the National firm of Accountants recommended by the Professional Contractors Group.

ContractorUmbrella featured 14th in the FastTrack 100 league table of Britain's fastest growing companies in 2007. [Visit here](#) for more information.

ContractorUmbrella was awarded the prestigious Investors in People accreditation in 2006.

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Key Features

- Unlike other Umbrella Companies we do not charge a percentage of your income, our fee remains the same regardless of your earnings.
- No hidden joining or leaving charges, no minimum commitment and no fees charged in-between contracts.
- ContractorUmbrella Ltd is an alliance partner of Contractor UK, Contractor Money, Freelance UK, Freelancers in the UK and associate members of the Professional Contractors Group the UK's largest trade body for contractors.
- Money-back **Customer Service Guarantee**.
- Web-based portal giving 24/7 access for both timesheets and expenses submission.
- Personal Account Manager for every client.

