

# A Guide to Hiring a Contractor

Business Information Factsheet

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## Introduction

If your business needs some specialist help or expertise that your in-house team can't supply, or if you have a project that is too big to handle without extra support, you might consider using a contractor. Contractors are not employees of your business but rather self-employed professionals who are engaged for a specific period of time to provide certain services.

This factsheet describes what contractors and sub-contractors are and explains how to choose and manage a contractor. It outlines the advantages and drawbacks, the legal implications and important factors to consider when drawing up a contract. It also contains hints and tips and sources of further information.

## What is a contractor?

A contractor is any self-employed person or third-party business that you engage to perform a specific service, usually for a set fee and period of time. The contractor charges you (their client) fees, either by the hour, by the day or as a lump sum, to undertake a project.

## What is a sub-contractor?

A sub-contractor is a self-employed person or a business that agrees to take on work from a contractor. Should your contractor decide to sub-contract some of the work they are performing for you, they will be entirely responsible for managing the delivery of the contract, including obtaining a satisfactory level of performance from their chosen sub-contractor. As the client, you are entitled to specify to the contractor that work cannot be sub-contracted in any circumstances, or at least not without your prior agreement.

## Benefits of using a contractor

- Contractors can perform tasks requiring specialist expertise that you do not have in-house.
- You can use a contractor for one-off jobs or during periods of high demand, such as seasonal peaks.
- Experienced contractors can sometimes start a new project at short notice and without the need for training.
- Contractors can provide temporary cover when permanent staff are on holiday or on sick leave.
- Your administration can be simplified - you do not have to organise Pay As You Earn (PAYE) tax or National Insurance contributions (NICs) for contractors.

- Hiring a contractor gives you flexibility and can help you to complete individual projects or deliver your services more quickly.

## **Hiring a contractor**

- Have clear objectives about the work you want the contractor to carry out and the deadlines. Always obtain at least three quotations and look at them in detail: the cheapest option may not offer the best value for money.
- If necessary, obtain the CVs of potential contractors to gain a better idea of their experience. If you are engaging a firm, ask if they can provide you with examples of their work. In each case, look for evidence of successful completion of similar projects.
- Find out whether contractors belong to a relevant trade or professional association. This will indicate that they meet certain standards in relation to issues such as quality systems and training, health and safety and technical ability.
- Seek personal recommendations from your business and customer contacts. This will be particularly helpful if you are looking for a contractor who operates in an industry sector you are currently not familiar with.
- Take up references from previous clients.

## **What are the legal implications of hiring contractors?**

Contractors working on your behalf are not classed as employees and so are not covered under employers' liability insurance. If you use contractors, you will therefore need public liability insurance, which includes two important issues for which you must be sure you are fully covered:

### **Health and safety obligations**

If contractors are injured during the course of their work for you through negligence attributable to you - for example, if they suffer an accident while working at your premises - they have the right to make a claim for damages against you.

### **Obligations to the public**

The liability for any property damage or injury to a member of the public caused by the contractor while working for you can be passed back to you.

Contractors should normally have their own public liability insurance and, depending on their area of expertise, professional indemnity cover. However, it is up to you as the client to ensure that the cover they have is sufficient, or you may become liable for any claim made against them. Ensure that your contractors have an appropriate level of insurance cover or check with your own insurer whether they are already, or could be, covered by your insurance.

## **What employment status do contractors have?**

The term 'contractor' is recognised in law as a status of employment that is different from 'employee'. Self-employed workers will be hired and engaged under a contract for services with your business, whereas employees will normally have contracts of employment.

The employment status of contractors may be unclear and depends on the particular circumstances of the engagement of the contractor. In some cases, a worker may be described as a contractor but HM Revenue & Customs (HMRC) would class them as an employee. The implications of this are that, for example, the contractor has the right to make a claim against you for issues such as unfair dismissal. In addition, HMRC can seek payment from you for unclaimed tax and NICs that should have been deducted through PAYE.

Some of the key criteria for determining that a worker is a contractor rather than an employee are:

- They have control over their work, in particular when, where and how it is done.
- They work for more than one client and the contracts are irregular.
- They use their own money to cover running costs during the project.
- They provide the main items of equipment needed to do the job.
- They may agree to a fixed price regardless of how long the job eventually takes.
- They must correct unsatisfactory work in their own time and at their own expense.

It can be difficult to ascertain the status of some contractors, so if in doubt take advice from your solicitor or accountant, or contact HMRC. Go to [www.gov.uk/employment-status](http://www.gov.uk/employment-status) for further information. You should also speak to your legal adviser about developing a standard letter of engagement and contract for services that can help clarify employment status as well as the terms and conditions of a contractor's work for you.

## **What are the health and safety implications?**

You have a duty to protect the health and safety of anyone working for your business and must ensure that safety measures for contractors are similar to those for permanent staff. You are also entitled to expect that they fulfil their own health and safety obligations towards your business as well as towards your customers or clients if the contractor carries out work on their premises.

Initially you need to carry out a risk assessment for the work to be undertaken by the contractor. You should then agree with them how the work will be done and the health and safety measures that are needed, such as safety equipment, working procedures and so on. Also decide what instruction and training should be provided and what procedures are needed for dealing with emergencies.

The Health and Safety Executive (HSE) recommends that health and safety requirements are built into the contract between you and the contractor. The HSE publishes a guide on the health and safety issues of using contractors, available at [www.hse.gov.uk/pubns/indg368.pdf](http://www.hse.gov.uk/pubns/indg368.pdf).

## **What are the disadvantages of using a contractor?**

- Contractors will be unaccustomed to your business' culture and values and have less of connection with them than your own employees.
- You need to watch out for 'cowboy' or 'rogue' contractors. Your business' reputation may be damaged if your contractor fails to provide an acceptable standard of work. Taking up references is a useful way of avoiding disreputable contractors.

- Using contractors, particularly those with specialist skills, is a relatively expensive option, so make sure you have costed your projects accurately. In the long term, it may be worth training employees in the skills a contractor is currently supplying so that once their training is paid for you can reduce your spend on external contractors.

## **What are the key issues when drafting a contract for services?**

- Define the exact role and responsibilities of both you and your contractor.
- Explain fully the background and requirements of the work you need to be carried out.
- Provide a detailed budget and agree the basis for cost estimates and any circumstances in which additional charges may be incurred.
- Set up a project schedule that includes the timescale for completing each section of the work.
- Give information about the availability of resources if the contractor needs access to your equipment or staff.
- Include milestones for reviewing progress at regular stages.
- Make clear the quality standards required.
- Be clear about fees (and whether you require timesheets) and reimbursable expenses, in particular whether you will pay for expenses only against receipts.
- Agree all fees and a payment schedule and discuss how the contractor will be paid, for example by BACS directly into their bank account or by cheque.
- Consider incentive schemes for early completion of the project.
- Consider penalty clauses for underperformance or late completion.
- Include a review and arbitration procedure to resolve any disputes and make it clear what types of misconduct will result in the termination of the contract.
- Consider a short notice period in the early stages of the contract. This will allow you to dispense quickly with the services of a contractor who does not meet your expectations.
- Where relevant, include a warranty requiring the contractor to maintain confidentiality and non-disclosure of your intellectual property.

It is important to seek legal advice about any contract before agreeing terms. If you intend to use several contractors, you could draft a standard contract template that can then be used to form the basis of others.

## **Hints and tips**

- Take the time to familiarise your contractors with your business culture. Follow an induction procedure similar to that used for permanent staff.
- Seek advice from your solicitor before drawing up the contract so that you are clear about your legal obligations and the information and issues that the contract should cover.

- Ensure that you provide full and up-to-date information to your insurance company. Liability claims involving injuries or death of contractors can result in significant legal costs if you are not properly insured.

## Further information

BIF006 Insurance Cover for Business

BIF289 A Guide to Carrying Out Health and Safety Risk Assessments

## Legal publications

'Using Contractors'

Health and Safety Executive (HSE)

Website: [www.hse.gov.uk/pubns/indg368.pdf](http://www.hse.gov.uk/pubns/indg368.pdf)

## Useful contacts

The Health and Safety Executive (HSE) is responsible for health and safety regulation in Great Britain. It publishes guidance on the health and safety obligations of employers.

Website: [www.hse.gov.uk](http://www.hse.gov.uk)

The Health and Safety Executive Northern Ireland (HSENI) is responsible for health and safety regulation in Northern Ireland. It provides information on the health and safety obligations of employers.

Tel: 0800 032 0121

Website: [www.hseni.gov.uk](http://www.hseni.gov.uk)

HM Revenue & Customs (HMRC) is the government department responsible for the collection of tax. It provides information and advice to individuals and businesses.

Tel: 0300 200 3200 (Employer helpline)

Website: [www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)

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