



Travel and subsistence changes from 6 April 2016 – client briefing

15 February 2016

What's happening?

From 6 April 2016 temporary workers working under (or subject to the right of) supervision, direction or control (SDC) will no longer be able to claim travel and subsistence (T&S) expenses relief¹. If a temporary worker has claimed this relief previously, you will not have paid employers' national insurance contributions (NICs) on the sums claimed. This legislative change means that employers' NICs will be due on the full sum paid to the temporary worker (subject to the usual thresholds).

Why is the government making these changes?

Employees cannot claim tax relief on ordinary commuting costs i.e. the cost of travelling between work and home. However employees can claim tax relief when travelling to temporary workplaces. The government believes that an increasing number of temporary workers have been claiming tax relief on travel and subsistence costs where it was never intended that they should. HMRC claim that this relief has cost between £265 million and £400 million per annum in lost revenue.

What is supervision, direction or control?

This is not defined in the legislation but is set out in [guidance produced by HMRC](#). We have copied the text below:

Supervision is someone overseeing a person doing work, to ensure that person is doing the work they are required to do and it is being done correctly to the required standard.

Supervision can also involve helping the person where appropriate in order to develop their skills and knowledge.

Direction is someone making a person do his/her work in a certain way by providing them with instructions, guidance or advice as to how the work must be done. Someone providing direction will often coordinate the how the work is done, as it is being undertaken.

Control is someone dictating what work a person does and how they go about doing that work. Control also includes someone having the power to move the person from one job to another.²

It will be assumed that the temporary worker works under (or subject to the right of) SDC in the manner in which they provide their services unless you or your agency suppliers can prove otherwise. Your agency suppliers may contact you to confirm the SDC position. You should not provide a statement (including in a contract) that the temporary worker does not work under (or is not subject to the right of) SDC if that is untrue. If you do, you risk becoming liable for any tax and NICs which would have been due had expenses relief not been claimed, together with any interest and penalties.

¹ The changes are set out in section 339A of the Income Tax (Earnings and Pensions) Act 2003. This is draft legislation at the time of writing, the final text will be available after the budget on 16 March.

² It should be noted that only one of these needs to be present for the rules to apply.



If your company does not pay HMRC the monies due, the directors of your business may be personally liable³.

REC is aware that clients seek indemnities from their agency suppliers, but you should not expect them to indemnify you for your own actions (they would not be able to get insurance on this). The agency's directors may also be personally liable if they provide a statement (including in a contract) that the temporary worker does not work under (or is not subject to) SDC when this is false.

How do these changes apply to personal service companies?

If a temporary worker currently works through their own limited company (also called a personal services company (PSC)) they do not need to consider whether they work under (or subject to the right of) SDC. Instead they will have to apply the [IR35 rules](#). If the temporary worker works "inside IR35" the PSC/ temporary worker will not be able to claim T&S expenses relief. If the temporary worker works "outside IR35" they will be able to claim T&S expenses relief. Whilst it may be tempting to mass migrate temporary workers into PSCs to avoid these changes, such movement carries risks for the temporary workers and your agency suppliers. This includes that HMRC would simply disregard the arrangements and apply the T&S rules anyway.

The construction sector

Since April 2014 your agency suppliers have not been able to supply contractors via CIS if they work under or subject to the right of SDC. However REC is aware that agencies are coming under pressure to supply such contractors under CIS from April 2016 because of the T&S changes. If a CIS intermediary fails to apply the T&S rules correctly, HMRC could pursue you or your agency suppliers for any unpaid sums if either of you have provided a false statement regarding SDC.

What must your agency suppliers do to comply with the new legislation?

The REC is aware that agencies are coming under pressure to find ways to circumvent the T&S changes. As shown, there are risks for all of the temporary workers, the agency, your business and directors if the rules are not applied correctly. In order to remain compliant, your agency suppliers may have to increase their charge rate to you. When they seek to negotiate with you bear in mind that this is to meet legislative changes and statutory requirements outside of their control. This is not merely to increase their margin for providing their recruitment services to you.

The advice set out in this document is based on the [draft legislation](#) and [guidance](#) published by HRMC on 9 December 2015. The final legislation will be published on or after 16 March 2016 (Budget Day). REC will keep its members updated.

This document has been created for REC Corporate Members for information only. It is not a substitute for legal advice on related matters and issues that arise and should not be taken as providing specific legal advice on any of the topics discussed. REC Member clients should obtain their own legal advice on matters set out in this document.

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³ Draft Section 688B ITEPA.