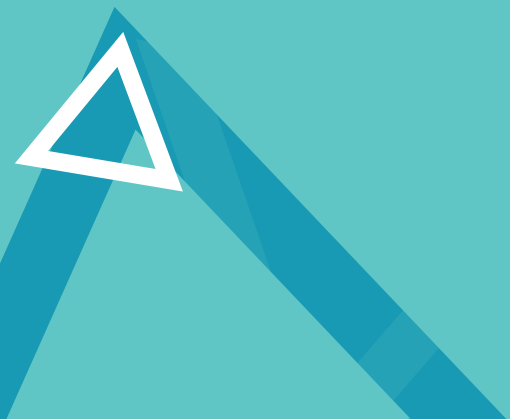


STATUS DETERMINATION STATEMENTS (SDS)

WHAT RECRUITERS NEED TO KNOW

WE ANSWER THE FOLLOWING QUESTIONS:

1. IF THE CLIENT IS NOT SMALL OR OVERSEAS, HAVE THEY DELEGATED THE SDS PROCESS TO YOU?
2. IF THE CLIENT DELEGATES THE SDS PROCESS TO YOU, WHAT ARE YOUR RESPONSIBILITIES FROM A CONTRACTUAL AND STATUTORY PERSPECTIVE?
3. WHO PROVIDES THE SDS?
4. WHEN DOES THE SDS NEED TO BE ISSUED TO THE CONTRACTOR?
5. IF THE CLIENT CONDUCTS THE SDS AND YOU DISAGREE WITH IT, CAN YOU CHALLENGE IT?



If the client is not small or overseas, have they delegated the SDS process to you?

Many clients expect their recruitment agencies to provide full compliance services, including issuing the SDS. Whilst the client can delegate this responsibility to a third party, they will still remain responsible and liable for it under the off-payroll legislation.

If the client delegates the SDS process to you, what are your responsibilities from a contractual and statutory perspective?

The intermediary closest to the contractor's PSC is defined as the fee-payer and providing they are based in the UK and not controlled by the worker they will also be classed as the deemed employer. The deemed employer is responsible and liable for deducting Income Tax and employee National Insurance contributions. They will also be responsible for paying Class 1 Employer National Insurance contributions and the Apprenticeship Levy, where applicable.

In most cases the deemed employer will be the agency. Agencies should either conduct the SDS on the client's behalf (with client sign-off) or carry out their own due diligence to ensure the SDS is a true representation of the contractor's status. In addition, the client may include contractual tax indemnities in the contract with the agency, so it is clear that the agency is the party in the supply chain taking on most of the risk and therefore needs to mitigate that liability as much as possible.

Who provides the SDS?

Although it may be conducted by the agency, the SDS must be signed off by the client. It can be created as a document or simply an email, and must state whether IR35 applies to the engagement with the contractor and offer an explanation on how the deemed employment status conclusion was made.

The SDS must be completed for every contract agreed with an agency or contractor. When completing an assessment, clients or the agency conducting it on their behalf must consider the pillars of working outside IR35; right of substitution, mutuality of obligation, supervision, direction and control, and financial risk.

When does the SDS need to be issued to the contractor?

The SDS must be issued prior to the first payment being made to the contractor. When the SDS has been created, the client needs to pass it on to the party directly below it in the contractual chain, which is usually the agency, as well as the PSC worker. In longer supply chains, there may be other parties involved. In this situation, the determination must be passed down each stage of the chain by each party until it reaches the fee-payer, who will pass it to the PSC worker. If a party in the contractual supply chain fails to pass on the SDS as they should, that party will carry the responsibility and liability as the deemed employer.

If the Client conducts the SDS and you disagree with it, can you challenge it?

As part of the IR35 assessment process, all clients are obliged to offer the contractor and deemed employer a clear process for challenging the status determination provided in the SDS, either of whom can initiate a dispute, should they feel the SDS does not fairly reflect the working practices and contractual terms.

When disputing the SDS, the contractor or deemed employer will need to clearly demonstrate which aspects of the SDS they disagree with and provide evidence to support their dispute. It is important that explanations clearly demonstrate how the original SDS differs from any legal documentation or working practices in relation to the key status tests.

Once the process has begun the client has 45 days to consider and respond to the disagreement that has been lodged. If the status determination remains unchanged, the client should explain why and if the status determination has changed, the client must provide and issue a new SDS with its revised supporting information within that timeframe.

If the client fails to provide a response to either the deemed employer or the contractor within 45 days they will become legally liable for calculating and deducting employment taxes instead of the deemed employer. It is therefore vitally important that this process is managed effectively by the client.