

Off Payroll Contractors

Substitute or Helper?

How HMRC approaches Substitution

This is additional information to help members make decisions on the tax status of off-payroll workers and the content has been checked with HMRC for accuracy. The information on these pages does not replace or modify HMRC's own guidance, which is available on gov.uk.

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OFF PAYROLL WORKERS - SUBSTITUTION

This is an area that HMRC will review as part of normal compliance activity with customers. Therefore, if you identify any issues when applying this guidance or identify any potential errors, please contact your HMRC Customer Compliance Manager.

About Substitutes and Helpers

A substitute is someone who replaces the worker, not someone who works alongside the worker to deliver the task(s)

A helper is someone who does some of the job the worker is hired to do, either for or with them.

Q. If the worker's business sent someone else to do the work (a substitute) and they met all the necessary criteria, could the end client ever reject them?

If the client can place any restrictions on the supply of the substitute this is a fettered right so suggests that the client has some degree of control over the use of a substitute.

Absolute freedom of the worker to supply a replacement without the need for the client's approval is unfettered and strongly indicative of a lack of personal service and therefore indicative of self-employment

The criteria would include but not be restricted to:

- being equally skilled, qualified, security cleared and able to perform the worker's duties
 - *If the worker is an expert and therefore no readily available replacement exists then substitution is not possible, equally if the role requires an accumulation of departmental knowledge then substitution is less likely. The expertise of the worker is a strong indicator of the need for personal service.*
 - *The substitute must be able to pick up the worker's task(s) without pre-training or any lead-in time. This means the substitute should operate at the same level as the original worker from the outset in all aspects of the engagement, providing seamless continuity for the end client. Holding an industry standard qualification is not itself sufficient for a worker to automatically be up to speed from the outset.*
- not being interviewed by the end client before they start (except for basic identity and verification checks)
 - *Verification checks are acceptable as part of the process of accepting a substitute and / or a helper*
 - *If a replacement worker needs to be interviewed or undertake some other sort of detailed vetting process (beyond verification checks mentioned above) we would not consider this to be a simple substitution*
- not being from a pool or bank of pre-approved workers regularly engaged by the end client

- *Replacing a worker from an existing bank of workers at the client's disposal is not substitution*
- doing all of the worker's tasks for that period of time
 - *The substitute must undertake all of the worker's tasks for the given time period*
- being substituted because the worker is unwilling but not unable to do the work

We need to know what would happen in practice, not just what it says in the worker's contract.

Any right of substitution must be exercisable in reality and not simply a contractual clause.

Yes - the end client has the right to reject a substitute for any reason, including if it would negatively impact the work

No - the end client would always accept a substitute who met these criteria

Q. Would the worker's business have to pay the person who did the work instead of them? Yes or No

- *The substitute must be identified and paid by the worker being replaced*

If the substitute would be paid by an agency, it won't count as substitution.

- *If an agency (or other labour provider) is involved in supplying the substitute, HMRC would consider this to be a new worker under a new contract fulfilling the business of the agency in supplying labour. These arrangements are not substitution*

Q. Has the worker's business needed to pay a helper to do a significant amount of the work for this engagement? Yes or No

For example - if a lecturer was hired by a university to write and deliver a study module:

- a researcher hired to source information could be classed as doing a significant amount of the lecturer's work
- a company the lecturer pays to print and bind materials for the module would not be classed as doing a significant amount of the work .