

Umbrella company factsheet for REC members

Introduction

Over the past few months, the REC Legal Helpline has been taking lots of queries about umbrella companies and how/whether they can be used in a compliant way. So, we have brought together the most frequently asked questions into one factsheet, with our answers and some guidance on how the [REC Code of Professional Practice](#) applies to umbrella company arrangements.

Question 1

My business supplies a mixture of PAYE workers and limited company contractors. Can my contractors insist on working through an umbrella of their choice?

No, you don't have to use this arrangement. However, you do need to be clear from the outset about the pay arrangements used by your business. So, if you only use PAYE and/or specific umbrella companies, you should make this known at the start so your temps and contractors can choose whether to work through your employment business or not.

You are ALWAYS required to provide your candidates with a Key Information Document (KID), before you enter into any contract with them. This must include, amongst other information, details of the pay arrangements that you will offer to them.

*The relevant part of the REC Code of Professional Practice is **Principle 2** - respect for honesty and transparency and **Principle 7** - respect for certainty of engagement.*

Question 2

Can a worker move to another umbrella company mid assignment?

No, a worker cannot move to another umbrella company until the member has agreed a contract with a new umbrella company (the umbrella company is considered a work seeker for the purposes of the Conduct Regulations and so, there must be a contract in place between the employment business and work seeker). The employment business would also need to inform the client of the identity of any new work seeker. You would also need to update the Key Information Document.

***Principle 1** - respect for laws.*

Question 3

Do I have to have a Preferred Supplier List (PSL) or can I choose to work with just one umbrella company?

You are not required to have a PSL or work with more than just one umbrella company, but there are risks for an employment business if they promote or facilitate the use of just one umbrella company if it turns out that the umbrella company is actually a Managed Service Company and not treating all of the payments that it makes to workers as employment income. You could be classified as an associate of the Managed Service Company exposing you to the risk of debt transfer liability. You can avoid this risk if you ensure that you don't promote a particular umbrella company to your workers - which is where having more than one umbrella company for workers to choose from will help.

You should always do due diligence checks to make sure they operate in compliant manner.

When using a preferred supplier list, do not rank the umbrella companies or direct a temporary worker to work through any particular umbrella company as they should make their own independent decision.

Principle 1 - respect for laws.

Question 4

If we use umbrella companies, do they need to give a Key Information Document (KID) to workers?

Yes, under the Conduct Regulations, employment businesses must give a KID to all workers before agreeing a contract with them. Again, for the purpose of the Conduct Regulations, the umbrella company is the employment business' worker - so both the umbrella company and the individual must receive the KID.

Although you do not have to give multiple KIDs to show different payment methods it is best practice to do so.

Importantly, a work seeker must receive a KID telling them how and by whom they will be ultimately engaged. So, if you engage with umbrella companies, you must give a KID to a worker to reflect this payment method. You must obtain the relevant information from the umbrella company in advance so that you can complete the KID and give it to the worker before the assignment starts.

Principle 1 - respect for laws.

Question 5

Do we have to provide a PAYE function if we supply temps?

No, there isn't a legal requirement for employment businesses to run their own payroll as you can choose to supply limited company contractors only (who work through their own personal service company or an umbrella company) or outsource your payroll.

However, you must tell workers from the outset what payment methods you will use. This information should be provided on your Key Information Document. Your workers can choose whether they wish to work for you or not.

Principle 2 - honesty and transparency and Principle 7 - certainty of engagement.

Question 6

Can an employment business force a worker to work through an umbrella company?

No, but the employment business must be clear from the outset about the engagement and pay methods they use, so that a work seeker can choose whether they wish to work for you or not.

Principle 2 - honesty and transparency and Principle 7 - certainty of engagement.

Question 7

Does an employment business have to provide a contract to a worker who is going to work through an umbrella company?

Yes, in line with the Conduct Regulations, you must give a contract to a worker before you provide any work finding services. So, if you provide any work finding services to a worker before the worker is engaged by an umbrella company, you will need to agree a contract with the worker, which includes all the information required by the Conduct Regulations. This contract will then be superseded by the contract agreed later between the worker and the umbrella company.

Principle 1 - respect for laws.

Question 8

Who is responsible for the employment rights of umbrella company workers?

Where an umbrella company employs agency workers on a contract of employment or any other type of worker contract, then **the umbrella company is responsible for most of their employment rights**, such as paying at least National Minimum Wage, holiday pay, and pension automatic enrolment duties. You should be clear with workers from the outset that if they are engaged by an umbrella company, it is the umbrella company who will pay and employ them (not you). A KID will also help to make this clear (see above for an employment business' obligations to provide a KID).

There are some employment obligations that fall not only on the umbrella company as employer but also on you and your client - such as the rights that apply under the Agency Workers Regulations.

Principle 1 - respect for laws, Principle 2 - respect for honesty and transparency and Principle 7 - respect for certainty of engagement.

Question 9

Are there any risks for employment businesses if an umbrella company enters into any tax evasion schemes - even if we don't know about them?

Yes, the Criminal Finances Act ('the CFA') makes organisations criminally liable for failing to prevent the facilitation of tax evasion offences in the UK or overseas. Originally it was intended to counteract

activities within the financial services sector but in fact it has been drafted quite broadly and it impacts all industry sectors including recruitment.

The CFA introduced a corporate criminal offence which is a criminal risk for recruitment businesses if an umbrella company enters into tax evasion arrangements. Even though the liability initially rests with the umbrella company to ensure that the appropriate tax is deducted and paid to HMRC, because of the CFA, employment businesses must avoid all non-compliant arrangements and carry out substantial due diligence checks on their umbrella companies.

Principle 1 - respect for laws.

Question 10

[Are referrals fees or gifts from umbrella companies a risk to the employment business?](#)

Depending on intentions behind any gifts or payment that are made or offered, there could be liability under the Bribery Act. The Act does not automatically make referral fees or the receipt of gifts unlawful; but you must consider whether the intention of a referral fee is to induce improper performance by anyone in your business. Referral fees paid to recruiters by umbrella companies for the referral of workers is not unusual in the recruitment sector but you must consider the risks under the Bribery Act 2010 where a person is guilty of an offence if s/he (directly or through a third party) offers, promises or gives a financial or other advantage to another: with the intention of inducing or rewarding improper performance of a relevant function or activity; or with knowledge or belief that acceptance of the advantage would constitute improper performance of a relevant function or activity.

If umbrella companies are offering large sums of money or expensive gifts for referrals there is a great risk that this will breach the Bribery Act.

You should have processes in place to ensure that staff must disclose to a senior member of staff any offers of gifts or payments in relation the service being offered by umbrella companies so that you can assess and guard against any risks.

You should also have an anti-bribery policy to minimise risk. Then your staff will know from the outset that you are committed to acting legally and with integrity in all your business dealings and relationships. The use of illegal kickbacks should have no place in an ethical supply chain.

Principle 1 - respect for laws.

Question 11

[If my contractors ask, do I have to share information with them about any referral fees or gifts from umbrella companies?](#)

Under the REC Code you are required to act honestly and transparently in your dealings with workers, clients and others. This means that you should 'not knowingly making a false or inaccurate statement, and you must not fail to disclose a material fact.' So, the Code would require you to be transparent with you contractors in this situation.

Principle 2 - respect for honesty and transparency.