

Managing a Contingent Workforce: The Risks, Benefits and Best Practice

Foreword

The contingent workforce in the UK, made up of non-permanent labour often called contractors, temps, consultants and freelancers, is steadily growing year on year. The Office of National Statistics reports that 24% of the UK labour force is made up of contingent workers, with the number predicted to rise to 30% by 2020.

However, the government are cracking down on companies who use contingent workers as demonstrated by the recent press surrounding court cases and pending investigations into the likes of Pimlico Plumbers, Uber, Hermes and Deliveroo. They have also introduced much stronger legislation around IR35 and the Criminal Finances Act to deter employers from using contingent workers when they could be permanently employed. As such, now more than ever, it is really key that businesses have full oversight of their contingent workforce and robust processes and mechanisms in place to manage them compliantly.

When utilised effectively alongside your permanent workforce, contingent workers can add significant value to your business, however, using them comes with a number of risks so it is critical that there is a consistent methodology in place to manage them and ensure robust, continued oversight.

The Risks

We frequently see that the sourcing and management of contingent workers seems to fall outside of the BAU remit of HR or Recruitment teams and sits in the Bermuda Triangle between Procurement, Finance and HR. Additionally, due to the nature of contingent workers i.e. they are usually sourced rapidly to meet an urgent need, it is very common for different Hiring Managers within a business to 'self-service' their needs

and therefore contingent workers are often engaged and managed in very different, disparate ways – exposing businesses to a number of legal and financial risks.

Legal Risks – when using contingent workers, businesses must comply with a range of regulations otherwise they are at risk of facing hefty fines and/or criminal liability:

- **The Criminal Finances Act (Sept 2017):** This legislation makes businesses vicariously liable for the criminal acts of 'associated' persons (i.e. contingent workers) who facilitate tax evasion whilst performing services for them. This legislation operates under a 'strict liability' arrangement with corporations being culpable even if they haven't directly participated in the act or aren't even aware the act has taken place. This legislation results in criminal liability and cannot be remedied financially. The only appropriate line of defence is being able to demonstrate that a business has reasonable and proportionate procedures (i.e. "policing") in place to prevent the facilitation of tax evasion by associated persons i.e. contractors and agencies providing these workers.
- **IR35:** This legislation provides a clear and distinctly differentiated definition of permanent employees and contractors to prevent disguised employment and hence Tax and National Insurance contribution evasion. One of the criteria that HMRC apply when evaluating cases is that the individual must not be under the supervision, direction or control of the client if they are to be truly defined as 'self-employed'. The Government, HMRC and the Employment Tribunal Service are becoming increasingly attuned with employers abusing the contractor model which has resulted in more claims,

tightening of legislation and a current consultation to roll-out the stricter public-sector standards to the private sector.

- **General Data Protection Regulation (GDPR):** This regulation, which came into force in May 2018, means that companies cannot operate under the principles of implied consent any longer, and that all 'Data Controllers' are required to collect and handle all personal data to the 'minimum level necessary'. Given the level of information you need to capture and store in relation to contingent workers records (i.e. contractor's insurance records, companies house registrations and VAT certificates to name but a few), it is now essential to have strong processes in place to ensure compliant management of workers' personal data.
- **Background Checks and Vetting:** 40%* of employers are not conducting background checks on contingent workers – this exposes business to significant risks as although they are not permanent members of staff, your contingent workers may well also have access to personal data, sensitive company/client information and intellectual property – therefore, we highly recommended completing background checks and vetting to ensure your workers credentials are verified and sound. It is also important to show that you have undertaken due diligence in regard to collation of evidence (i.e. to demonstrate that you've checked that they are not flouting the rules of The Criminal Finances Act by having overseas bank accounts or operations).
- **Terms and Conditions:** It's important to have robust and commercially consistent T&Cs in place for all of your contingent workers. In every contractor audit delivered by The Curve Group we have found that the T&Cs in place are not up to date with current legislation and are incredibly ambiguous and inconsistent in the commercial rates and expectations on both the work and intermediary, such as agency, provider.

Financial Risks - utilising contingent workers instead of permanent employees can be costly if not managed properly:

- **Value for Money:** Day rates are likely to be much higher than the equivalent salaried staff payroll costs so it's important to make sure you only use contingent workers when it makes good business sense to do so (i.e. check whether there's a better case to hire a new staff member instead). Additionally, the

spend generated by engaging multiple agencies and paying a variety of different day rates and margins/ mark-ups can also mean that value for money is a) quickly diluted and b) difficult to measure.

- **Higher Accumulative Spend:** The total spend on a contingent workforce can quickly spiral as without a robust process for tracking usage, extensions and spend vs budgets originally signed off, it is easy to spend far more than you initially anticipated. By way of example, if you have just 40 contractors on your books across a year, your annual spend is likely to be circa £5.5m PA!

The Benefits

Having covered off the risks, it is important to now set out the many benefits which can be gained by utilizing a contingent workforce alongside your permanent body of staff:

- **Agility:** Speedy access to additional capacity and skills
- **Quality of Talent:** Ability to engage specific, expert and niche skills sets
- **Speed:** They are often very experienced and can therefore can 'hit the ground running'
- **Flexibility:** Projects, profiles and tenures can be shaped as needed in response to business needs
- **Options:** Provides a solution to meeting business needs during recruitment freezes, periods of employee absence, if recruitment for a permanent role has not been successful due to shortage of workers or a lengthy notice period is in place pending a permanent starter
- **Savings:** Only pay for contingent workers as and when they're needed

In summary, businesses benefit greatly from the speed, choice, flexibility and options afforded via contingent workers – they are able to draw in niche skill sets and or additional capacity faster than it would take to recruit a permanent member of staff and then they only have to pay for the skills / capacity for as long as they need them.

With the remaining uncertainty of Brexit still looming and as the economy remains fairly flat in terms of growth, contingent workers provide businesses with viable, short term options to meet critical business needs. When engaged by a well organised, ethical contingent workforce management solutions provider, the workers themselves (i.e. all the

non-permanent Talent used by a business such Contractors, Consultants, Freelancers, Temps and Statement of Work providers) also benefit as they:

- Have full visibility of their rates
- Are given a single point of contact, ensuring a smooth on-boarding process and in-assignment support
- Will be protected by legally compliant contracts
- Get to exercise more choice and control over the positions they take

When treated well, workers are then more motivated to engage with the client and complete the tasks in hand. Furthermore, if they have a good experience, they are more likely to be willing to return to your business to support with future needs if required.

Best Practice

The Curve Group are an established market leader in providing bespoke contingent workforce management solutions to our clients. We have distilled our experience into three 'best practice' recommendations as follows:

1. Integration

In order to reap the benefits and reduce the risks of using a contingent workforce, we would recommend businesses invest in developing a streamlined process for engaging and managing all facets of their contingent workforce. This ought to form part of a broader Talent Management/ People strategy, rather than being separate, so that efficiencies and opportunities between the two can be easily identified. Spend time developing a robust contingent workforce management process and approach, with a clearly defined owner within the business – or seek professional, external advice to help you do so if you do not have the resources in house. This may well require a significant change management project (and contingent expertise to support this!) but it is well worth the investment and will bring significant savings, better governance and reduce the risks.

2. Data is King!

If you don't already have robust data to hand related to your contingent workforce (i.e.

numbers in situ, spend including cost to hire including agency fees and rates to contractors, start and end dates, extensions, length of service, confirmation of vetting, copies of T&Cs etc) the best place to start is by undertaking a deep dive, detailed company-wide audit. It can often be very illuminating and generate some staggering results. When we conducted contingent workforce audits for clients who do not yet have a Managed Service Provider in place, we asked them to estimate how many contingent workers they were using.

On average, their initial estimations were 44% less than the actual number we identified – highlighting how tricky it can be to track and monitor usage of contingent workers if there isn't a proper framework in place to do so.

In order to ensure data is collected and can be utilised to make informed decisions, we would recommend investing in an end-to-end platform (or using an MSP's** technology solution) through which every stage of sourcing and managing this workforce can be tracked.

3. Invest in The Resources Required

Contingent workforce management requires different skills and a faster pace to permanent recruitment. Therefore, we would recommend either hiring in an experienced contingent workforce manager/ team to roll out and manage a single, consistent process or outsourcing the management to an experienced MSP** provider such as The Curve Group.

* Source: Sterling Talent Solutions

** A Managed Service Provider (or MSP for short) is the term given to professional recruitment businesses to whom you can outsource the management of your contingent workforce.

The Curve Group offers a range of flexible, bespoke contingent workforce solutions which can be 100% tailored to meet your business needs and can conduct initial audits to identify risks and opportunities relating to your use of contingent workers. Get in touch today to find out how we can support your business to become more efficient, save money and remain 100% compliant.

Established in 2004, we are the UK's largest privately-owned Recruitment and HR provider. We deliver agile, ethical and configurable people solutions across the entire Recruitment and HR spectrum. Our mission statement, or quest as we would say, is to create extraordinary people solutions that transform working lives.



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