

# REC Response to the *Call for Evidence: Umbrella Company Market*

22 February 2022

The REC is the voice of the recruitment industry. As one of Britain's biggest business organisations, the REC's purpose is about making great work happen. We represent over 3000 businesses involved in helping companies to hire. Recruitment is a £43 billion industry that creates opportunities for people and grows our economy placing over a million people into new permanent jobs each year and ensuring that a further million workers are in workplaces as temps on any given day.

We drive standards and empower recruitment businesses to build better futures for their candidates and themselves. We are champions of an industry which is fundamental to the strength of the UK economy. In our response we have addressed only the questions that are relevant to us as a representative body and not the ones specific to employment businesses and workers who work through them

The REC's main asks around regulating umbrella companies

1. We are not advocating for a ban of umbrella companies.
2. But there should be reciprocal employment business/umbrella company obligations to enable more clarity for the worker
3. Umbrellas should be subject to some of the obligations that employment businesses have under the current recruitment industry legislation.
4. Regulation should create transparency around fees/payments taken by umbrellas companies.
5. Regulation should take away the right for umbrella companies to opt out of the Conduct Regulations.

Answers to consultation questions below.

## Question 6: If you use umbrella companies, why do you work with them?

Our member feedback tells us there are many reasons why employment businesses use umbrella companies.

- Some employment businesses have traditionally supplied limited company contractors only and do not operate their own payroll.
- Reducing the cost of operating a payroll.
- Reducing the administrative burden of operating a payroll.

- The extension of the off-pay roll rules to the private sector in 2021 has driven an increase in the use of umbrella companies for contractors who previously worked through their own limited companies.

### Question 9: Have you noticed any change in the way umbrella companies market themselves and the benefits they offer over the last 5 years? What has changed?

Our members tell us that umbrella companies have marketing strategies that focus on tax savings, sometimes referring to measures 'approved' by HMRC. Previously this related to 'approved' dispensations relating to the operation of travel and subsistence schemes.

Another benefit which umbrella companies advertise for agency workers is having a single 'employer' if they find work through multiple employment businesses.

More recently some of our members have informed us of aggressive marketing of 'joint employment' models which see the umbrella company offering a contractual arrangement whereby the umbrella company jointly employs the agency workers with the employment business. These models attempt to allocate the payment and payroll related aspects of the relationship to the umbrella company and the more general employment terms to the employment business. We have seen examples of marketing materials promoting the VAT savings that can be made and the fact that the arrangement is 'approved' by HMRC.

### Question 12: Do you encourage or require your work-seekers to work through an umbrella company?

a. Why?

b. What type of workers?

Our members take a mixture of approaches. Some employment businesses do not operate their own payroll and they require agency workers to work through an umbrella company. Or in some sectors where it is common for agency workers to work through a company, the agency worker will already have a chosen umbrella company that they want to work through.

In areas where candidates are in short supply the use of umbrella companies is sometimes driven by candidates.

### Question 34: If you are an employment business or end client which uses umbrella company employees, do you take any steps to prevent umbrella companies, which may engage in tax non-compliance, from entering your labour supply chains? If so, what steps?

As part of REC membership, we provide legal services to our members which includes a detailed model document library. As recruitment supply chains are longer, compliance requirements are more onerous, especially when engaging with umbrella companies.

#### Due Diligence checklists

We advise our members that it is essential for employment businesses to carry out the appropriate due diligence checks on umbrella companies and other intermediaries to ensure that they are compliant, and do not expose themselves to unnecessary risk. We have a due diligence checklist which members can tailor to meet the requirements of their own business and any requirements specific to the sectors

they operate in. The questions in the checklist cover ITEPA 2003/Off-payroll rules, the Criminal Finance Act 2017, and specific questions on:

- Intermediaries, their officers, and group companies
- Financial matters in relation to how the workers will be paid
- National Minimum Wage
- Deduction of PAYE and National Insurance
- Travel and subsistence
- HMRC complaints or investigations
- Services provided to temporary workers
- Referral fees
- Complaint procedures, and so on

We advise our members to ensure that they know how the intermediary pays the temporary worker and that it deducts appropriate tax and NICs, pays employer's NICs and does not use disguised remuneration schemes. Members are also advised to question any intermediary that pays temporary workers a large proportion of their income tax and NICs free. To also avoid any intermediary that shows a scheme with multiple parties and payments being directed to or via those multiple parties.

#### External accreditation

Having an external accreditation through an independent body, such as FCSA or an equivalent body, provides a level of assurance around certain standards of compliance in tax and employment law. The requirement to use an accredited umbrella company and the introduction of the Key Information Document has resulted in employment businesses having shorter PSLs. This has ensured a more definitive list of approved umbrella companies that they can engage with.

#### Audit the umbrella company

We also advise our members to include the right to audit the umbrella company in any contract, and at a frequency which means the information provided is accurate and up to date. The audit requirement can also be a flow-down from an upper contract with public sector clients in framework agreements.

### Question 35: How could employment businesses or end clients, who use umbrella companies, do more to ensure tax compliance in their supply chain?

Clients should have full visibility over their labour supply chain. Although the umbrella company is at the end of the supply chain, clients should be obliged to know who is engaged in the supply chain. After all they have some responsibility to take the necessary steps to prevent umbrella companies engaging in non-compliant activities. There is already legal precedent for making end clients responsible for their supply chains.

#### Off-payroll rules

Public sector and large/medium sized clients must assess the employment status of every worker who operates through their own intermediary. Clients must communicate their determination and the reasons by using a Status Determination Statement, which must be given to the worker and organisation they contract with. There is a requirement to take reasonable care when making the determination and to have processes in place to deal with any disagreements with the determination. Where a client breaches their obligations under the off-payroll rules, they are liable for any unpaid income tax and National Insurance Contributions.

#### Other legislation where clients are liable

End clients are responsible for maintaining compliant supply chains when it comes to tackling slavery and labour exploitation (as per the Modern Slavery Act 2015 (Transparency in the Supply Chains) Regulations 2015). The Criminal Finance Act 2017 introduced new criminal offences for organisations

which fail to prevent the facilitation of tax evasion. Increasingly, the strategic enforcement of labour standards recognises the power of leverage within the supply chain. By linking the actions of suppliers down the supply chain to the end client at the top, improvements in compliance can be achieved throughout the chain. This means the end client must bear some responsibility for ensuring compliance among its suppliers.

**Question 36: Do you have experience of umbrella companies engaging in any related schemes or models to those covered above, or any other tax non-compliance not covered in this paper? If so, what are they?**

Yes. To benefit from certain tax arrangements, there are other umbrella models which have recently been used in some sectors i.e. education. There is a **joint employment model** which does not have a legal definition and the concept is relatively new to the UK. This model is typically between a recruitment agency and an umbrella service provider offering joint employment of the worker. In the arrangement, the agency retains its responsibility for finding work for the workers and the umbrella service provider processes the payroll and carries out any duties relating to HR. Where a worker is engaged under a joint employment arrangement, their employment status is reflected through their employment contract, which will specify both the agency and umbrella company as the employers. Though this engagement model is often compared to the traditional umbrella company arrangement, the crucial distinction centres around the treatment of VAT. This model is referred to in the [Supply of staff and staff bureaux \(VAT Notice 700/34\)](#). With this model it is difficult for workers to know what the nature of their relationship is with the employment business and the umbrella company as their obligations to the workers are unclear.

Some of the agency and umbrella service providers' obligations are listed in the table below:

	Obligations
<b>Agency</b>	Pre-employment checks Find work Arrange assignment Issue timesheet AWR Invoice and receive payment from hirer
<b>Umbrella Service provider</b>	Obtain personal details of worker Issue contract Calculate pay Calculate and pay ENI, app levy, pension, holiday pay, SSP, SMP and so on RTI Make deductions and payment to HMRC HR complaints Benefits package

The REC has raised concerns about this model with the Employment Agency Standards Inspectorate, who have confirmed that they are currently reviewing it in light of specific provisions in the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

**Question 37: How could the government support or encourage employment businesses and end clients to do more to ensure tax compliance in their supply chain?**

A sample of our members had strong views that making the end client bear responsibility for the non-compliant activities of umbrella companies is the only way to solve the problems.

**Question 38: What further steps, if any, do you think HMRC and government should take to prevent or tackle non-compliant models outlined in this section?**

There should be better enforcement and publication of HMRC's enforcement activities around non-compliant umbrella models. HMRC must have a clear strategy to remove non-compliant umbrella companies from the market. This requires HMRC to investigate and act quickly and publish their outcomes. For HMRC to tackle non-complaint umbrella models, it must invest more resources in investigations and enforcement. Not acting swiftly to close down non-compliant activity results in a proliferation of tax avoidance models. This allows businesses that work with them to gain an unfair advantage over those that choose not to. The lack of evident action by HMRC also serves to embolden those umbrella company activities.

**Statutory regulation of umbrella companies**

Government also needs progress plans by the Department of Business, Energy and Industrial Strategy to bring umbrella companies into statutory regulation under the Employment Agency Standards Inspectorate.

We have set out our full proposals for umbrella company regulation in our paper: [\*Umbrella Company Regulation - What Should This Look Like?\*](#)