



## Using subcontractors

**It is not unusual for a business to feel the need to take on extra staff, as it grows. But in these uncertain economic times the thought of committing to being an employer can feel like one step too far. Using subcontractors can, if managed well, allow you to expand your business without having to employ anyone.**

### What is a subcontractor?

A subcontractor is an independent business. They agree to provide agreed services for a set fee (and possibly duration) under a contract for services. When you hire them you become their client. In simplest terms, they are not a part of your business, you have no legal line management over them, you don't manage or supervise them and you don't tell them how they're going to do their work. You have outsourced your own company's work to them and they are effectively delivering the service to you or to your customer 'as if they were you'.

### What's the difference between a contract for services and a contract of service?

This is an important distinction. A subcontractor is bound under a contract FOR services (ie. you are buying their services). An employee is bound under a contract OF service (ie. a contract of employment).

Pros	Cons
You can hire a contractor/ subcontractor when you need more flexibility	Contractors/subcontractors may cost your business more than the equivalent daily rate for employing someone
You can use a contractor/ subcontractor for one-off jobs and jobs requiring specialist expertise or fast turnaround	By relying on contractors/subcontractors, your business does not acquire or develop skills in-house
Your permanent staff can concentrate on the core business	Permanent staff may resent contractors being paid more money for doing similar work to them
Some contractors/ subcontractors can start the work or project at short notice, even when large numbers of workers are required	If you use a contractor that then uses a subcontractor, you have no direct control over the quality of subcontractors' work
You can often specify the type and duration of contract you need for the job	Contractors/subcontractors may not appreciate your business culture and may lack the motivation and commitment of permanent staff
You have no PAYE or National Insurance contributions administration for contractors/ subcontractors	Workers can be employees or subcontractors of the contractor - you need to understand relevant tax implications and other rights.
You can obtain temporary cover for a permanent staff job or work that needs doing	

## What happens if they are considered an employee?

Because of the difference in contract, sub-contractors are not usually considered employees. However, even though you call them a subcontractor there are occasions when they would still, legally, be considered an employee.

If so, they would have the full range of employment rights, for example the right to claim unfair dismissal and the right to maternity leave etc.

## How do I know if they're considered an employee?

HMRC gives very clear guidance on this, please follow the link [hmrc.gov.uk/employment-status/index.htm](https://www.hmrc.gov.uk/employment-status/index.htm)

In summary, generally speaking, if the answer is 'Yes' to all of the following questions, then the worker is probably an employee:

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Do they work a set amount of hours?
- Can someone move them from task to task?
- Can they get overtime pay or bonus payment?

If the answer is 'Yes' to all of the following questions, it will usually mean that the worker is self-employed:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

If you are unclear about this then it is important that you seek expert legal advice.

## How do you make money on this?

It's usual, when using subcontractors, to negotiate a reduced fee so that you can then charge this on to your client/consumer at a higher cost.

As a result you may wish to consider stipulating, in their contract, that they will only be paid if you are paid by the client – thereby reducing the risk to your business.

## What health and safety implications are there?

Both you and the subcontractor have responsibilities under health and safety law. You both need to take precautions to reduce this. If relevant, you should be prepared to ensure that, when selecting your subcontractor, you have asked them about their risk assessments and health and safety policies.

## Do I need to consider insurance?

If you are using subcontractors your employer's liability insurance will not cover them. You will also need to have public liability insurance (PLI).

Your PLI policy should cover contractors/subcontractors working for you away from your premises unless the contractors/subcontractors have their own PLI with the same level of cover. Many contracts for service stipulate that subcontractors MUST hold their own.

You may need business liability insurance cover for services provided to a customer by your business through a sub contract.

## What needs to go in the contractor for service?

Like many commercial contracts, the exact structure of this agreement will be personal to you and your business. You should seek advice from a solicitor, who will be able to discuss your objectives and projects, before recommending an appropriate draft contract. As a basic list, however you should include:

- the contractor's/subcontractor's responsibilities
- the objectives, scope and required quantity of the work and key deliverables (goals), eg in a project schedule with milestones

- resources you must provide if the contractor/subcontractor needs access to your equipment and/or staff
- fees and a payment schedule - you may wish to consider penalty or incentive schemes for under-performance or over-performance
- a procedure for resolving disputes, eg review or termination
- confidentiality agreements

Some business, who regularly use subcontractors, put in place open-ended contracts, thereby allowing them to regularly use the same subcontractor without the need for lots of separate contracts.

It is important that you seek legal advice. For help with using subcontractors please follow the link [wards.uk.com/service/commercial-services](https://wards.uk.com/service/commercial-services) or contact Marina Maclennan or Ciaran Keane on 0117 9292811.

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