

UMBRELLA & LIMITED COMPANIES

NEU Guidance for members in England & Wales

'Umbrella' and 'limited' companies have been around for a while now, but they still retain the capacity to cause confusion. This guidance aims to de-mystify both concepts.

What we say

When you read through this document you may have questions about your experiences with one or more supply teacher agencies, and there may be collective issues that affect other members. In most circumstances, you should discuss the matter with the NEU rep in your schools or your local secretary initially as they will know whether similar concerns have been raised by other members.

Although members may sometimes feel that they are the only person who is affected by or concerned about a particular issue, in reality this is seldom the case. Any difficulties you may experience are likely to be shared by other supply teachers in your area and, as a member of the NEU, you have the advantage of being able to act collectively with your colleagues. This will give you the confidence of knowing that you have the weight of the Union behind you.

What are the different employment categories for supply teachers?

An **employee** is someone employed on a "contract of service". Supply teachers working via agencies are generally workers (see below) rather than employees. This category may include supply teachers working under umbrella company arrangements, who may be employees of the umbrella company. However, employment contracts with umbrella companies generally confer only the minimum statutory employment rights.

A **worker** is someone engaged under a "contract for services". This status is less secure and gives narrower access to employment rights. This category includes supply teachers who obtain their teaching work via supply agencies on a day to day basis with no obligation to work and no guarantee of work. Such teachers have access to rights under the Agency Worker Regulations, either from day one or after a period of 12 weeks in the particular job.

An **independent contractor** is someone engaged under a contract for services or consultancy services. It is the least secure status and gives very limited access to employment rights. Supply teachers are often told they can work as independent contractors if they set up and work via limited company arrangements. The Union's view is that in most cases this status will **not** apply to teachers working as supply teachers, even if they have set up their own limited companies. As discussed below, simply setting up a limited company and labelling oneself a "contractor" does not mean that that will necessarily be held to be the case in law.

What are "umbrella companies" and how do they work?

Increasingly, supply teachers working for agencies are being asked to sign contracts with "umbrella companies". These are companies which act as the legal employer for workers such as supply teachers who obtain work via employment agencies. Umbrella arrangements usually involve four parties – the teacher, the school, the agency and the umbrella company. The teacher's 'employment' contract is with the umbrella company, not the agency. Typically, the agency will agree an assignment and pay rate with a school and then look for a supply teacher

to undertake the assignment. Income tax, employee *and* employer National Insurance contributions, as well as the agency's commission and the umbrella company's fee, are deducted from the rate paid by the school and the residual sum is then paid to the supply teacher as net pay. Employment benefits such as sickness and maternity benefits and workplace pension contributions will generally be at the statutory minimum only. Many umbrella companies also withhold an amount of money to be passed back to the supply teacher at a later date in the form of holiday pay.

What are "limited companies" and how do they work?

Some agencies advise supply teachers to set up "limited companies" for their supply teaching work. The teacher pays a fee for the establishment of a limited company for which they become the sole owner, director and contractor (rather than worker or employee). Generally, agencies will then direct the teacher to a third party which can handle matters such as company tax returns and year-end accounts on the teacher's behalf, as well as receiving and processing payments for teaching work and making a net payment to the teacher concerned.

Teachers are often told that setting up a limited company will then allow access to tax relief on travel and subsistence expenses - but, as we warn below, this is not necessarily the case. Teachers are also often told that they will be outside the scope of the Agency Worker Regulations and auto-enrolment pension rights - but this again is doubtful, unless the teacher undertakes only genuine consultancy work, for example running workshops, providing private tuition or other extra-curricular activities and is not under the direction, supervision, control of the school/hirer. Where the teacher is employed to teach classes whose regular teacher is absent, the teacher is unlikely to be regarded as genuinely self-employed. Be aware too that a claim by an agency that a limited company scheme is "HMRC approved" is very unlikely. HMRC does not endorse limited company schemes.

What is the NEU stance on umbrella companies and limited companies?

The NEU believes that supply teachers should in all cases be directly engaged, preferably by the school/academy or local authority or, failing that, by the supply agency which places them. We have substantial reservations about umbrella or limited company arrangements and we advise members against entering into them wherever possible.

Why do supply agencies favour umbrella companies and limited companies?

The key benefit to supply agencies is that they avoid the costs and duties of being the legal employer of supply teachers (such as employers' NI contributions and payroll administration costs). Instead, the supply teacher is either employed by the umbrella company - which passes these costs on to the supply teacher by deducting them from the fee paid by the school before paying the teacher - or there is no contract of employment at all due to the limited company arrangement.

Do supply teachers have to agree to work under an umbrella company or limited company arrangement?

No. Some NEU members have been told by their agencies that the agency will only offer work to supply teachers covered by an umbrella company or limited company arrangement. The NEU strongly disapproves of this practice but regrettably it is not unlawful. Many supply teachers will, however, find that if they press the point with the agency and demand to be paid on a PAYE basis by the agency itself, then the agency will agree to this rather than lose the teacher to another agency which is willing to engage the teacher in this way. Being paid directly by the agency on a PAYE basis does not give you employee status - and the agency may say you won't receive the same pay rate - but it does avoid the need for one of the above arrangements.

The NEU obviously does not endorse any umbrella company arrangement. If you think that you want to or have to work under such an arrangement, however, you should check whether the

particular umbrella company is a member of any trade body with some form of code of conduct. The best known of these is the FCSA (www.fcsa.org.uk) which has a Compliance Code for its members.

Do umbrella or limited company arrangements allow tax relief on travel and subsistence expenses?

Supply teachers engaged by umbrella companies cannot claim tax relief on home to work travel and subsistence expenses. Since 6 April 2016, HMRC tax rules have specified that supply teachers working via "intermediaries" (ie those engaged by umbrella companies or indeed by supply agencies) cannot claim tax relief where they are under the "supervision, direction and control" of the hirer (ie the school). This has brought the tax rules into line with those applying to employees generally, underlining that supply teachers are employees rather than self-employed.

The issue of supervision, direction and control is pivotal to the legal definition of someone who is an employee as opposed to someone who is genuinely self-employed. For example, an employer can direct where and when the supply teacher should work, what subjects and classes they should teach, which duties they should undertake etc., and can supervise and control the quality of the teaching, punctuality, conduct etc. of the teacher. Unlike a self-employed contractor, a supply teacher cannot send in a deputy on any day they are not available to be present. In other words, the status of someone working as a supply teacher in a school is emphatically that of an employee, rather than someone who is self-employed.

Some agencies tell supply teachers that they can claim tax relief on such expenses when covered by a limited company arrangement. The NEU warns supply teachers that even in such circumstances HMRC may still determine (retrospectively if it wishes) that the above tax rules apply, as supply teachers covered by a limited company arrangement are still working under the direction, supervision and control of the hirer.

Since April 2017, schools and local authorities have had a new duty to ensure that those working for them pay the correct tax rather than giving a tax advantage to those who choose to contract their work through personal service companies. Only genuinely self-employed teachers, such as independent contractors running workshops or projects who do not work under the supervision and direction of the school/hirer, can realistically take advantage of the tax relief available in limited company arrangements. In the vast majority of cases, however, self-employment is definitely not legitimate for supply teachers. If a local tax office is processing such employment as self-employed, this is very likely to be rectified, the practice stopped, and retrospective action taken against the supply teacher(s) concerned.

Do umbrella or limited company arrangements affect my rights under the Agency Worker Regulations and other legislation?

Some umbrella company contracts are "guaranteed work" contracts excluding the teacher from the right to equal pay under Regulation 5 of the Agency Worker Regulations. You should check the contract carefully in order to see whether or not it contains such a term and, if so, seek advice if you do not wish to work under these arrangements. You will, however, still be covered by the right to be provided with a workplace pension scheme (but not the right to be part of the Teachers' Pension Scheme).

Supply teachers are usually told that the Agency Worker Regulations and workplace pension provisions do not apply to limited company arrangements. This, if true, clearly will not benefit the teacher. The NEU believes, however, that as with tax matters (above) the fact that the supply teacher is under the direction, supervision and control of the hirer means that they are deemed to be an agency worker for the purposes of the AWR. This is supported by DfE guidance on the AWR (see the separate NEU guidance on the AWR). In practice, however, many teachers will fail to pursue this and will end up excluded from rights the law intends they should receive.

Do supply teachers earn more if they work under umbrella or limited company arrangements?

This will depend upon the pay rate for the work undertaken, the level of fees charged by the umbrella company or for support for the limited company, and other variables such as the amount which can be claimed as legitimate expenses etc. The employer's NI contributions as well as the supply teacher's own NI contributions and the umbrella company's fee will be deducted from the rate paid by the school/hirer. Supply teachers working under a limited company will see deductions made for employer's NI and VAT. They may find that once such deductions have been made, any pay advantage over engagement by the agency on a PAYE basis is negligible or non-existent. This is even more likely given the changes to tax relief arrangements described above.

How can I find out how much I would earn with an umbrella company?

Don't just accept oral assurances that you will be paid more under an umbrella company arrangement. Ask for a copy of the proposed contract. Insist on a detailed pay illustration comparing the net pay rates which you would receive, and a full pay reconciliation listing all costs, charges and deductions which would be made, if engaged under the proposed contract. Compare this with the pay you would take home if paid directly by the agency on a PAYE basis. Watch out for potential "hidden costs" mentioned in the contract but not included in a pay illustration – such as low-rate introductory fees which increase after a certain period, or penalty charges for leaving the company. If the contract provides for 'holiday pay' to be deducted and paid at a later date, make sure you know about the arrangements for payment (and ensure you receive it when it is due). Ask questions about the other matters discussed in this guidance.

Do all this before you sign a contract. Never sign any document exempting an agency or umbrella company from any liability. After signing a contract, always check your pay slips carefully to confirm that the correct deductions have been made. If anything on the pay slip is unclear or causes you concern, contact the umbrella company without delay. If you cannot resolve an issue regarding tax liability, contact HMRC directly. For employment-related problems, contact the NEU for advice.

What are the NEU's key policy concerns in this area?

The main concern is one of principle. These arrangements drain funding for education away from schools while still generally paying supply teachers much less than those directly employed by local authorities and schools. Many umbrella companies are based overseas in order to avoid liability for tax on their profits. Limited company arrangements are, in these circumstances, explicitly a vehicle for tax avoidance. The NEU is also concerned at the impact on individual supply teachers who can find themselves deprived of statutory rights or at risk of HMRC action in case of issues over tax or payroll errors.

Where should I go for further advice and support?

NEU supply members with concerns or problems relating to their employment conditions should in the first instance contact the NEU AdviceLine, or the NEU Wales office instead. Their details may be found at <https://neu.org.uk/contact-us>.

Further Information

Further information and guidance for supply teachers can be found on the NEU website, <https://neu.org.uk>.

You can join the NEU on-line at <https://neu.org.uk/join> or on 0345 811 8111 (local rate) or you can complete an application form and return it to National Education Union, Hamilton House, Mabledon Place, London WC1H 9BD.

We want supply members to work together to take forward our work for supply teachers. Contact the NEU locally to find out about participating in your local association and join with other members in your area to tackle common problems. Contact details are on your membership credential and on the NEU website at <https://neu.org.uk/contact-us>.

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