

Contractors Lose Employment Rights in Court Decision

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Contractors are likely to lose chances to obtain employment rights in an upcoming decision of the Appeals Court. Contractors will be taxed like employees, but have no chance of obtaining employee rights.

The Right Honourable Justice Lord Mummery has already suspended all cases of this kind in expectation of this decision, due in an appeal of the 2006 case James v. Greenwich before the end of this year.

The decision, which has already been reached by the Court of Appeal, but which has not yet been announced, is expected to reverse previous case law under which contractors who were effective employees of a client, even though they had contracted through an agency, were able to prove the existence of an implied contract with the client. This meant that contractors could obtain employee rights like vacation pay or sick pay.

But this impending announcement by the Appeals Court will put an end to all that. "Contractors are likely to go on being treated like employees, without enjoying any employee rights or perquisites," says Dave Chaplin, director of the specialised Web site for contractors - Contractor Calculator (<http://www.contractorcalculator.co.uk>).

Worse still, if HMRC believes contractors are 'disguised employees,' the Revenue will continue applying 'IR35 (<http://www.contractorcalculator.co.uk/IR35.aspx>)' and will tax these contractors just like company workers. But there will be no recourse for the contractors to obtain employee rights.

The only positive wrinkle in this story for contractors is that, given the change in case law, proving a contractor to be 'inside IR35' will become extraordinarily difficult for the Revenue. The same case law is used for 'IR35' as for proving the existence of an implied employment contract.

The text of the Court decision should be available within a few weeks and we will be able to make more specific comments on its scope and effect. But it is clear that it will have longstanding consequences for the UK contracting industry.