

ASK THE EXPERTS

Locum tax and contract retention

LOCUM TAX STATUS

Q We have a locum who has been working here for four months to help us cope with a recent increase in workload. We are thinking of asking them to continue beyond the six-month period we initially planned.

When would we have to start deducting national insurance (NI) contributions and NHS superannuation from their pay? You would need to deduct tax, NI and superannuation only if the locum is to become an employee of the practice. The length of time someone works does not matter. Their employment status depends on the terms and conditions of the agreement you have made with them.

If you are using the locum only to help you through a busy period, and once this is over you will no longer need their services, they are self-employed; you have no obligation to offer the locum work and they have no obligation to accept it.

If the locum can decide when to work and can decline work, then they are in business of their own accord.

However, if you decide that you are going to need additional clinical help for the foreseeable future, and you tell the locum what days/sessions you need them to work, and under the arrangement you have agreed they cannot refuse these shifts, the locum counts as an employee under tax legislation.

Other factors that point to employment are if the locum receives holiday and sick pay

THE EXPERTS

Email questions or phone our experts...



NHS RULES

Dr Tim Kimber is a Littlehampton GP and deputy chairman of West Sussex LMC.
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INVESTMENT PLANNING

Liz Willis is a financial adviser at the medical division, St James's Place Partnership.
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PARTNERSHIP

Stuart Williamson is a partner at accountants Williamson West.
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LEGAL

Lynne Abbess is a partner at solicitors Hempsons and offers outline legal advice to GPs in England and Wales.
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PREMISES

John Hearle is a chartered surveyor and chairman of Aitchison Raffety. Email: john.hearle@argroup.co.uk or fax: (01727) 844472



PENSIONS AND FINANCE

Kevin Quinn is a financial planner at specialist medical accountants Ramsay Brown & Partners.
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ACCOUNTANCY AND TAXATION

Jenny Stone is a partner at Ramsay Brown & Partners.
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PRACTICE-BASED COMMISSIONING

Maggie Marum is a management consultant for the NAPC and runs its practice-based commissioning helpline.
Phone: (020) 7636 8626. www.napc.co.uk

and is just as involved in practice activities as all other staff members (for example, they would attend your Christmas party).

Unfortunately, there is no clear legal definition of whether someone is employed or self-employed, so get advice from your practice accountant.

You can find HM Revenue & Customs' guidance on determining an individual's employment status at www.hmrc.gov.uk.
Jenny Stone

dispersed among neighbouring practices; it may put the practice out to tender or advertise for a vacancy; or it may come to an informal agreement with you over your 24-hour retirement.

I would guess that a lot depends on your relationship with the PCT and on your and your practice's performance.

But the only way of ensuring that you keep a grip on the practice would be to take on a partner. You need to give 28 days' notice of this and then a further 28 days' notice of the practice going back to single-handed status.

After taking 24-hour retirement, you need to give the PCT 28 days' notice that you are going back to your practice as a partner.

You would clearly need a binding agreement with the new partner. My advice is to discuss your plans openly with the PCT. It may find it easier to accommodate what you want to do if it knows before you submit your formal notice.

After 24-hour retirement you may only work a maximum of 16 hours for the NHS in the first month.

Dr Tim Kimber

GMS CONTRACT RETENTION

Q Can you advise me about retirement and taking my pension? I am a single-handed GP who recently turned 60. I want to take 24-hour retirement, take my NHS pension and return to my practice full-time.

Can you let me know how I can retain my GMS contract for 24 hours? Do I need a legally binding letter from my PCT stating that after 24 hours I will still hold my contract?

How many hours or sessions can I work before I become full-time again? Who is in charge of my patient list for the 24 hours, and how can it be transferred back to me? Do I need a written assurance about that?

I think that you have sensed that returning to your practice is more complex than it appears at face value.

When you retire you are effectively terminating your GMS contract with the PCT, and it has discretion over what happens next. It may allow your list to be

PLEASE NOTE

Please ask for 'GP Ask the Experts'. You may be asked to book a full consultation if your request is time-consuming or difficult. Our specialists retain the right to refuse advice. The information in the Ask the Experts list is for information purposes only. The expert advice is intended to provide general guidance only. It should not be relied upon by readers, who should seek further professional advice. No legal responsibility can be accepted by GP for the experts' answers.



Ask your questions online

www.healthcarepublic.com/experts