



GOING GLOBAL

Secondments



As commerce and global markets expand, employers are increasingly deploying members of their existing workforce overseas. This briefing, Part Five of our *Going Global Guide*, outlines some issues to think about when considering seconding an employee to a foreign jurisdiction on a temporary basis.

Who is the host?

The host is the organisation that the employee is being sent to. This could be another member of the employer's group (internal) or a separate organisation (external). It would be prudent to use a formal secondment agreement for internal secondments, and it is essential to do so for an external secondment. Your agreement with the host should set out what your obligations will be towards each other and toward the employee during the secondment. You should take advice on what local employment laws may apply whilst the employee is working overseas.

In addition to entering into a secondment agreement with the host, an agreement with the employee is normally required. This should set out any new terms which will apply during the secondment. Often this will be done by way of a letter or agreement between the employer and employee. However, in some cases the employee may instead be asked to sign up to the secondment agreement between the employer and host meaning that all of the relevant provisions are contained within a single document. This may not be appropriate if the employee is not or should not be privy to the underlying commercial arrangement between you and the host.

Practical arrangements governing the secondment

Whether you are dealing with an international secondment or a local one, some key practical and commercial arrangements would commonly be documented, including the role of the employee while on secondment and the commercial agreement regarding whether the host will be paying a fee to the employer, for example, to cover the cost of the employee's salary. Specific issues also arise when sending an employee on an international secondment as set out below.



For a secondment overseas you should consider whether to continue paying in the home currency, or whether to change to the local currency for the duration of the secondment.

Location

You should be clear about where the employee will be working from. While with a local secondment, it may be that an employee continues to work from your site or from home, it is far more likely that the employee will work from the host's site in an international secondment. You should consider whether the employee will need to be mobile from that base.

Duration

As with a local secondment, you should specify the intended duration of the secondment, any notice provisions to terminate the arrangement and importantly, what will happen when it comes to an end. The intended duration (and intention that when the secondment ends the employee will ultimately return to you) can have a bearing on the tax treatment of salary and other payments, and as such, you should take advice on this at an early stage. In an international secondment, the duration can take on a greater significance as the period of time that the employee will be working abroad can have visa implications as discussed below.

Working pattern

You may need to consider practical factors, such as time zones or different weekly working patterns. The impact this has on day-to-day business will vary depending on how you wish to maintain contact with the employee during the secondment.

Pay

For a secondment overseas you should consider whether to continue paying in the home currency, or whether to change to the local currency for the duration of the secondment. Advice should be taken on any logistical, or tax issues that may arise as a result of doing so. For example, you should check that the payroll is able to process payments in foreign currencies and/or to foreign bank accounts. You may also wish to consider whether a change in salary or provision of additional allowances might be appropriate during the secondment, on the basis of increased living costs or out-of-pocket expenses and the employee may require protection against currency fluctuations. The question of who covers the costs of any such uplift is normally a commercial decision to be taken between the employer and host.

Benefits and insurance

You should consider whether the employee is still eligible to participate in any bonus, pension, share incentive and other benefit schemes operated by the employer while posted overseas and whether the secondment will have any impact on existing benefits already accrued. If they do remain eligible to participate, think about steps you may need to take to ensure that benefits remain in place as intended. You should also consider whether any additional benefits may be necessary (or desirable) dependent on the host country. For example, while medical insurance may not be required in the UK, it may be far more important in some other countries. You may even want to consider paying for language lessons.

Tax implications

As already explained, you should take advice on the tax implications of seconding an employee overseas. The secondment may give rise to a presumption of tax residency for the employee in the host country. Additionally, as an employer you may be liable for corporation tax due to the presence of your employee in that country. You should also consider whether national insurance/social security contributions will continue to be due in the home country for the duration of the secondment.



Personnel management arrangements

As with any secondment, it will be important to clarify management arrangements, including day-to-day line management. This will include things like annual leave requests, sickness reporting and ongoing performance management. It may be more practical for day-to-day line management to be carried out by the host employer.

Data protection and intellectual property

Data protection law varies across jurisdictions so you should consider steps you may need to take to enable the host to process personal data and other information in compliance with the law. You should also give careful consideration to whether you need to take any additional steps to protect your business's confidential information during the secondment.

Making it happen

There will also be a number of logistical considerations including:

Immigration, visa and work permit requirements

It is important to start thinking early on about what needs to be done to ensure the employee has the right to legally work in the chosen country. You should be clear about where responsibility lies for making the necessary arrangements and gaining the necessary permissions for entry into and right to reside and work in the host country. In some cases, even short term secondments or business trips can potentially give rise to visa requirements. You should decide who is liable for payment of any fees associated with this. It is also important to build in time for acquiring the relevant permissions or permits. Finally, you should think about how you will manage any breaches by the employee (or host) of any immigration or visa requirements.

Relocation expenses

Take time to think about the full cost of relocating the employee and decide commercially who is covering that cost. In some cases, costs may include relocating whole families and paying for accommodation, school fees and family benefits. Alternatively, you may decide to cover the costs of regular trips home or trips for family members to visit the employee.

The end of the secondment

As with all secondment arrangements, you should be clear about what will happen when the secondment ends. This is likely to include the costs associated with the employee (and family) physically moving home again. It will also be important to consider how the employee will re-integrate into your business and how you can make the most of the stronger connections that the employee may have with the host organisation and any new knowledge they may have gained while on secondment. If you have particular concerns about the host potentially poaching the secondee, then it can help to set out in the secondment agreement with the host any restrictions on them offering a role to the employee during the secondment or on the employee accepting a role with the host within a certain period after the secondment ends.

You will find that many of the considerations associated with managing an overseas secondment are consistent with those for a secondment that is within the UK. However, taking local advice on what may happen in the country that the employee will be seconded to will help to ensure that any overseas secondment is managed effectively. By using our international network we can provide appropriate local advice around the world.

It is important to start thinking early on about what needs to be done to ensure the employee has the right to legally work in the chosen country.



This briefing is Part Five of our six-part *Going Global Guide* to international employment issues. The complete guide includes:

- Part One: Territorial scope of UK employment law
- Part Two: Employment contracts
- Part Three: Restrictive covenants
- Part Four: Employment checklist
- **Part Five** **Secondments**
- Part Six: International employees working in the UK

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This briefing contains a summary of general principles of law. It is not a substitute for specific legal advice.

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